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Transitions to Justice: Prisoner Reentry as an Opportunity to Confront and Counteract Racism

ADRIENNE LYLES-CHOCKLEY*

Introduction

Prisoner reentry is a crucial social justice issue. According to the Department of Justice, about 650,000 prisoners are released from incarceration annually, many into communities already desperate for low-income housing, physical and mental health treatment, education, employment, counseling and other social services.¹ Reentry programs are gaining momentum across the country as states realize the tremendous costs of incarceration and recidivism to victims, offenders and communities. In this paper I argue that reentry programs are important not only because they promote public safety and decrease recidivism, but because they can serve as a tool for confronting and counteracting racism and effecting social justice. In Part I, I discuss race disparities in incarceration and recidivism rates and examine the correlation between incarceration and race. Part II addresses the fact and effects of the mass incarceration of black men. In Part III, I explore the collateral consequences of incarceration for black ex-offenders including stigma, economic distress and the deterioration of social networks. Part IV suggests some minimal requirements for the successful reentry of black ex-offenders including interrelated employment, education and health services specifically designed to remedy racial disparities.

I. The Correlation Between Incarceration and Race

The alarming rates of incarceration and recidivism across the

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1. U.S. Dep't of Justice, Reentry, <http://www.reentry.gov> (last visited Jan. 19, 2009).

United States are made only more disturbing by the staggering statistics correlating incarceration to race. Simply put, a black person has a substantially higher chance of going to prison (18.6 percent) than a white person (3.4 percent).² Based on current rates of first incarceration, an estimated 32 percent of all black males will enter State or Federal prison during their lifetime, compared to only 5.9 percent of all white males.³ Nine percent of all black males aged 25 to 29 were in prison in 1999.⁴ More than one-third of black male high school dropouts were in prison or jail in the late 1990s — more than were employed.⁵ In 2001, 64 percent of prison inmates belonged to racial or ethnic minorities.⁶ At the end of 2004, there were 3,218 black male inmates per 100,000 black males in the U.S., compared to 463 white male inmates per 100,000 white males.⁷ At the same time, about 8.4 percent of black males between ages 25 and 29 were in State or Federal prison, compared to 1.2 percent of white males in the same age group.⁸ Although incarceration rates drop with age, the percentage of black males aged 45 to 54 in prison in 2004 was still 3.3 percent — nearly three times the highest rate (1.2 percent) among white males, aged 25 to 29.⁹ Based on current estimates, black men are incarcerated eight times as often as white men.¹⁰

Time served correlates with race as well. For all offenses, black offenders released by mandatory parole — that is, released according to statutory provisions — serve 23 percent more time than their white counterparts.¹¹ Black offenders released by discretionary parole — that is, according to a parole board decision — serve 9 percent more

2. U.S. Dep't of Justice, Bureau of Justice Statistics, <http://www.ojp.usdoj.gov/bjs/crimoff.htm#recidivism> (last visited Jan. 19, 2009).

3. *Id.*

4. Allen J. Beck, *Prisoners in 1999*, BUREAU OF JUSTICE STATISTICS BULLETIN (U.S. Dep't of Justice, Washington D.C.), Aug. 2000.

5. Bruce Western & Rebecca Petit, *Incarceration and Racial Inequality in Men's Employment*, 54 INDUS. & LAB. REL. REV. 3, 10 (2000).

6. See U.S. Dep't of Justice, *supra* note 2.

7. *Id.*

8. *Id.*

9. *Id.*

10. DARREN WHELOCK & CHRISTOPHER UGGEN, RACE, POVERTY AND PUNISHMENT: THE IMPACT OF CRIMINAL SANCTIONS ON RACIAL, ETHNIC, AND SOCIOECONOMIC INEQUALITY 6 (Nat'l Poverty Ctr., Working Paper Series No. 06-15, 2006), http://www.npc.umich.edu/publications/workingpaper06/paper15/working_paper06-15.pdf (last visited Jan. 19, 2009).

11. In 1999, black offenders served an average of seven months longer than whites who had been convicted of the same offense — 38 months compared to 31 months. TIMOTHY A. HUGHES ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, TRENDS IN STATE PAROLE 1990-2000 8 (2001).

time than offenders who are white.¹² Empirical evidence indicates that subconscious racial biases lead decision-makers at various key points in the processing of a criminal case to view black as more dangerous and less credible than white Americans.¹³

Incarceration is just the first step in a vicious cycle of reentry, recidivism and re-incarceration that is compounded by the socioeconomic inequities related to race. Nearly 650,000 people are released from incarceration each year.¹⁴ This translates to 1,600 ex-offenders each day. A Bureau of Justice Statistics study of fifteen states found that nearly 30 percent of released offenders were re-arrested within six months of their release, just over 44 percent within the first year and over two-thirds within three years.¹⁵ The study concluded that 51.8 percent of released prisoners ended up back in prison.¹⁶ People arrested while on parole account for about 35 percent of new prison admissions each year.¹⁷

Race disparities in incarceration may be caused by a variety of factors. The disproportionate representation of black Americans in the criminal justice system has been exacerbated by a punitive shift in criminal justice policy. Sentencing policy changes in the last twenty years requiring mandatory minimum sentences for drug-related offenses significantly impacted black incarceration rates. For instance, the number of black drug offenders sentenced to prison increased by 707 percent between 1985 and 1995 (compared to 306 percent for whites).¹⁸ In the same time period, drug offenders accounted for 42 percent of the rise in the black state prison population (compared to 26 percent of the rise in the white population).¹⁹

Compounding these statistical leaps is the fact that judges may act on their own preconceptions when sentencing defendants. For example, defendants who exhibit socioeconomic characteristics already overrepresented in the criminal justice population, such as

12. Black offenders serve 37 months while white offenders serve 34 months. *Id.*

13. Andrew E. Taslitz, *Wrongly Accused: Is Race a Factor in Convicting the Innocent?*, 4 OHIO ST. J. CRIM. L. 121, 125-26 (2006).

14. U.S. Dep't of Justice, *supra* note 1.

15. PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 1994 3 (2002).

16. *Id.* at 8.

17. JEREMY TRAVIS ET AL., URBAN INST., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 5 (2001), available at http://www.urban.org/UploadedPDF/81111from_prison_to_home.pdf [hereinafter PRISON TO HOME].

18. CHRISTOPHER J. MUMOLA & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 1996 10 (1997).

19. *Id.*

unemployment or reliance on social welfare subsidies, may be punished more severely than those who do not.²⁰ Judges may also improperly consider a defendant's race when deciding whether to enhance a sentence based on legal factors such as offense severity and weapons use.²¹ There is evidence that defendants receive more severe sentences when they possess attributes that reinforce the courts' stereotypes of "dangerous" offenders, including simply being black and male.²² Research also indicates that race-related disparities actually increase under determinate sentencing. Ironically, this is true despite the fact that determinate sentencing guidelines aim to reduce racial disparities by specifically outlining the weight of legal factors in imprisonment decisions.²³ Finally, research indicates that black neighborhoods are subject to more intense parole surveillance and greater punitive police enforcement than white neighborhoods, even during periods of a general decline in crime.²⁴

Unfortunately, a growing body of research indicates that recidivism rates are linked to race as well. Nationally, black offenders are the most likely to recidivate (32.8 percent) while white offenders are the least likely to do so (16 percent).²⁵ The relationship between race and recidivism is also evident in statistical data of individual states. In Florida black male offenders are 27.1 percent more likely to re-offend than non-blacks and are 30.8 percent more likely to be re-imprisoned.²⁶ Massachusetts exhibits similar racial

20. See generally Celesta A. Albonetti, *An Integration of Theories to Explain Judicial Discretion*, 38 SOC. PROBLEMS 247 (1991); Darrell Steffensmeier & Stephen Demuth, *Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who Is Punished More Harshly?*, 65 AM. SOC. REV. 705, 708-09 (2000).

21. See, e.g., Terance D. Miethe & Charles A. Moore, *Racial Differences in Criminal Processing: The Consequences of Model Selection on Conclusions About Differential Treatment*, 27 SOC. Q. 217 (1985).

22. See generally Cassia Spohn & David Holleran, *The Imprisonment Penalty Paid By Young, Unemployed Black and Hispanic Male Offenders*, 38 CRIMINOLOGY 281 (2000) (documenting study that found that race, gender, age, and employment status interact to produce harsher sentences for offenders who are black or Hispanic, male, young, and/or unemployed).

23. See MARC MAUER, *RACE TO INCARCERATE* (1999). For example, Ohio's structured sentencing guidelines have not produced more equitable treatment across race groups in that state, but have actually yielded a probability of imprisonment that is 8 percent higher for blacks (61 percent overall) than for whites (53 percent overall). John Wooldredge et al., *(Un)anticipated Effects of Sentencing Reform on the Disparate Treatment of Defendants*, 39 LAW & SOC'Y REV. 835, 855 (2005).

24. Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods*, 30 FORDHAM URB. L.J. 1551, 1554 (2003).

25. U.S. SENTENCING COMM'N, *MEASURING RECIDIVISM: THE CRIMINAL HISTORY COMPUTATION OF THE FEDERAL SENTENCING GUIDELINES* 12 (2004), available at http://www.ussc.gov/publicat/recidivism_general.pdf [hereinafter *MEASURING RECIDIVISM*].

26. FLA. DEP'T OF CORR., *RECIDIVISM REPORT: INMATES RELEASED FROM FLORIDA*

disparities; black offenders recidivate at a rate of 44 percent compared to a 37 percent recidivism rate by white offenders.²⁷ There is evidence that racial inequality significantly amplifies the risk factors for recidivism among black offenders.²⁸

Because black Americans tend to live in racially and economically segregated neighborhoods, their communities feel the brunt of these staggering incarceration figures. Research indicates that the exit and reentry of prison inmates is geographically concentrated in America's poorest minority neighborhoods.²⁹ As a result poor black communities have become incubators for recidivism.

II. Effects of the Mass Incarceration of Black Men

Incarceration has significant effects on all prisoner populations, but growing evidence demonstrates that the mass incarceration of black men poses distinctive harms upon black communities, including substantial damage to social networks, the distortion of social norms and the destruction of social citizenship.³⁰ The staggering racial disparities in incarceration and recidivism rates threaten the economic security of neighborhoods already in distress and further erode the infrastructure of politically vulnerable black communities.³¹ Furthermore, statistics indicate that high concentrations of incarcerated community members increase rather than reduce crime,³² thereby further destabilizing black communities.

PRISONS — JULY 1995 TO JUNE 2001 4 (2003), available at <http://www.dc.state.fl.us/pub/recidivism/2003/execsum.pdf>.

27. RHIANA KOHL ET AL., URBAN INST., MASSACHUSETTS RECIDIVISM STUDY: A CLOSER LOOK AT RELEASES AND RETURNS TO PRISON (2008), available at http://www.urban.org/UploadedPDF/411657_massachusetts_recidivism.pdf.

28. Michael D. Reisig et al., *The Effect of Racial Inequality on Black Male Recidivism*, 24 JUSTICE Q. 408, 427 (2007).

29. Todd R. Clear, *The Problem with "Addition by Subtraction": The Prison-Crime Relationship in Low-Income Communities*, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 181, 184 (Marc Mauer & Meda Chesney-Lind eds., 2002).

30. Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STANFORD L. REV. 1271, 1277 (2004) [hereinafter Roberts, *Mass Incarceration*].

31. See generally TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE (2007) [hereinafter IMPRISONING COMMUNITIES].

32. Todd R. Clear, *Backfire: When Incarceration Increases Crime*, 3 J. OKLA. CRIM. JUST. RES. CONSORT. 1 (1996), available at <http://www.doc.state.ok.us/offenders/ojrc/96/Backfire.pdf>; See also Raymond V. Liedka et al., *The Crime-Control Effect of Incarceration: Does Scale Matter?* 5 CRIMINOLOGY & PUB. POL'Y 245 (2006).

Concentrations of removal or incarceration and subsequent reentry of black men — fathers, uncles, brothers, sons — have serious intergenerational consequences for family formation and stability. In a 1996 survey of black inmates, half indicated that they had a family member who had been incarcerated.³³ Black children are nearly nine times more likely to have an incarcerated parent than white children.³⁴ This has devastating consequences for black communities, given that children of incarcerated parents are five times more likely to be incarcerated than their peers; one in ten will be incarcerated before reaching adulthood.³⁵ As more black men are incarcerated, social networks dissolve until the broader community is fundamentally altered, with women left behind to try and prevent their children from continuing the cycle of incarceration while at the same time struggling themselves with various social and economic challenges.³⁶ The disproportionate removal of black men from their communities is especially disturbing given that severely imbalanced gender ratios are a predictor of crime and violence.³⁷

For every black man who leaves the community for prison, those who depend on him for support experience social and economic hardships resulting from his removal. These hardships are magnified in black communities in which extended family are especially important in child-rearing.³⁸ Furthermore, this is compounded by the

33. JAN M. CHAIKEN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATIONS IN THE UNITED STATES 1996 62 (1999).

34. CHRISTOPHER J. MUMOLA, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, INCARCERATED PARENTS AND THEIR CHILDREN 2 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>.

35. ANNIE E. CASEY FOUNDATION, FAMILY TO FAMILY: TOOLS FOR REBUILDING FOSTER CARE, PARTNERSHIPS BETWEEN CORRECTIONS AND CHILD WELFARE 8 (2002), available at <http://www.aecf.org/upload/publicationfiles/partnerships%20between%20corrections.pdf>; See also CHILDREN OF INCARCERATED PARENTS (DENISE JOHNSTON & KATHERINE GABEL eds., 1995); For an overview of the impact of parental incarceration on children, see Ande Nesmith & Ebony Ruhland, *Children of Incarcerated Parents: Challenges and Resiliency*, in *Their Own Words*, 30 CHILD. & YOUTH SERVICES REV. 1119 (2008).

36. See generally J. Creasie Finney Hairston, *Prisoners and Families: Parenting Issues During Incarceration* (U.S. Dep't of Health & Human Services, Washington, D.C.), Jan. 2002, available at http://www.fcnetwork.org/reading/hairston_PrisonersandFamilies.pdf.

37. See, e.g., David T. Courtwright, *The Drug War's Hidden Toll*, 13.2 ISSUES IN SCI. AND TECH. 71, 73 (1996); See also Robert J. Sampson, *Unemployment and Imbalanced Sex Ratios: Race-Specific Consequences for Family Structure and Crime*, in *THE DECLINE IN MARRIAGE AMONG AFRICAN AMERICANS* 229, 231 (M. Belinda Tucker & Claudia Mitchell-Kernan eds., 1995).

38. See, e.g., Robin Jarrett, *A Family Case Study: An Examination of the Underclass Debate*, in *QUALITATIVE METHODS IN FAMILY RESEARCH* 172 (J. Gilgun et al., eds., 1992). Only 15 percent of married couples are able to endure a period of incarceration of one partner; of this 15 percent, only three percent to five percent are still together one year after release. Mary Dallao, *Coping with Incarceration — from the Other Side of the Bars*, 59 CORRECTIONS TODAY 96 (1997).

twin burdens of reduced household income due to diminished employment opportunities when the ex-offender returns home³⁹ and the persistent two-to-one ratio of black to white unemployment.⁴⁰

The high incarceration rate of black Americans contributes to a disproportionate removal of black children from parental custody.⁴¹ Long-term incarceration during which an offender is unable to place her children with friends or family can cause her to lose access to her children permanently.⁴² Incarcerated black parents whose children are in state custody have reason to fear permanent severance of their parental rights based solely on incarceration.⁴³ With some exceptions, the Adoption and Safe Families Act mandates that courts begin the process of termination of parental rights once a child has been in foster care for fifteen of the last twenty-two months.⁴⁴ Given that the mean time served to first release is forty-four months for black inmates (versus twenty-seven months for white inmates),⁴⁵ the average black offender whose children are in foster care may well lose the right to reunite with children after release.⁴⁶

By disrupting and destroying social networks, mass incarceration also disturbs black communities' social norms and enforcement of social rules. It is nearly impossible for disrupted communities to enforce shared norms because it is incredibly difficult to reach consensus on common goals and values.⁴⁷ Because informal social

39. WHELOCK & UGGEN, *supra* note 10, at 3.

40. AM. SOCIOLOGICAL ASS'N, THE IMPORTANCE OF COLLECTING DATA AND DOING SOCIAL SCIENTIFIC RESEARCH ON RACE 9 (2003), available at http://www2.asanet.org/media/asa_race_statement.pdf.

41. See, e.g., DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 200 (2002).

42. See Lannett P. Dalley, *Imprisoned Mothers and Their Children: Their Often Conflicting Legal Rights*, 22 HAMLINE J. PUB. L. & POL'Y 1, 19-22 (2000) (discussing criteria leading to termination of parental rights and likelihood of such termination due to parent's legal and physical situation).

43. For a thorough discussion of prisoners as parents, see JEREMY TRAVIS ET AL., *URBAN INST., FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY* (2005) available at http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf [hereinafter *HIDDEN COSTS*].

44. 42 U.S.C. § 675(5)(E) (2008).

45. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *COMPENDIUM OF FEDERAL JUSTICE STATISTICS 2002* (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/cfjs0207.pdf>.

46. See generally Kelly Noonan & Kathleen Burke, *Termination of Parental Rights: Which Foster Care Children are Affected?*, 42 SOC. SCI. J. 241 (2005).

47. See generally Dina Rose & Todd Clear, *Incarceration, Reentry and Social Capital: Social Networks in the Balance* (U.S. Dep't of Health & Human Services, Washington, D.C.), Jan. 2002, available at http://www.urban.org/uploadedpdf/410623_SocialCapital.pdf [hereinafter *Reentry and Social Capital*].

control plays such an important role in maintaining stability and safety, the breakdown of norm creation and enforcement can seriously jeopardize a community's safety. This reproduces the dynamics that lead to high levels of crime in the first place: lack of parental supervision, increased poverty, and social isolation.

Ex-offenders usually return to the communities they lived in — the communities where they committed their crimes — prior to incarceration.⁴⁸ Importantly, the victims of black offenders tend to be black as well.⁴⁹ The spatial concentration of ex-offender reentry into poor black communities exacerbates crime in those communities and fosters conditions that contribute to recidivism.⁵⁰ As such, the subject of prisoner reentry is crucial not only in terms of criminal justice, but in terms of social and racial justice as well.

"Prisoner reentry" as used in this article refers to the transition from incarceration into society for adult ex-offenders.⁵¹ Ex-offenders may be released unconditionally, released pursuant to an agreement of supervised probation or parole or released after re-incarceration for a new offense or for the violation of conditions of their probation or parole.⁵² Given that (1) black Americans today constitute 900,000 of the total 2.2 million incarcerated persons,⁵³ (2) black men have the highest chance of being incarcerated out of any other racial group in the country,⁵⁴ (3) black offenders are most likely to recidivate,⁵⁵ (4) ex-offenders return to the communities they lived in prior to incarceration⁵⁶ and (5) ex-offender reentry is geographically concentrated in America's poorest black neighborhoods,⁵⁷ reentry is inextricably linked with race.

The many *causes* of these race disparities, one of which is institutional racism, are starting to receive the attention they

48. NANCY G. LAVIGNE ET AL., URBAN INST., A PORTRAIT OF PRISONER REENTRY IN ILLINOIS 46, 51 (2003), available at http://www.urban.org/UploadedPDF/410662_ILPortraitReentry.pdf.

49. RANDALL KENNEDY, RACE, CRIME, AND THE LAW 19 (1997).

50. See, e.g., Todd R. Clear et al., *Coercive Mobility and Crime: A Preliminary Examination of Concentrated Incarceration and Social Disorganization*, 20 JUST. Q. 33 (2003).

51. For an overview of prisoner reentry, see PRISON TO HOME, *supra* note 17.

52. *Id.* at 14-16.

53. MARC MAUER & RYAN S. KING, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 1 (The Sentencing Project, 2007), available at http://sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf.

54. U.S. Dep't of Justice, *supra* note 1.

55. MEASURING RECIDIVISM, *supra* note 25, at 12.

56. LAVIGNE ET AL., *supra* note 48, at 46.

57. Clear et al., *supra* note 50.

require.⁵⁸ In the meantime it is important to raise awareness of the *fact* of race disparities in the reentry population as a means of promoting social justice.⁵⁹ Racism, for the purposes of this article, refers to a system of policies, practices and norms that structures opportunities, encourages certain assumptions and messages, assigns value and allocates advantage based on race.⁶⁰ Prisoner reentry provides a unique opportunity to confront and counteract racism by counteracting racial disparities across socioeconomic arenas including education, employment, health, housing, interpersonal relationships, financial capacity, political rights, and community stability — and reduce incarceration and recidivism rates in the process.

III. The Collateral Consequences of Incarceration

Collateral consequences are the indirect penalties, disabilities or disadvantages that automatically accompany federal and state criminal convictions.⁶¹ These penalties attach to, but are legally separate from, any criminal sentence.⁶² Collateral consequences encompass a wide array of sanctions that together deny ex-offenders fundamental social, economic and political privileges and rights that most Americans view as integral elements of citizenship.⁶³ These include parental rights;⁶⁴ voting and jury service;⁶⁵ various forms of

58. See, e.g., HUMAN RIGHTS WATCH, *TARGETING BLACKS: DRUG LAW ENFORCEMENT AND RACE IN THE UNITED STATES* (2008), available at <http://www.hrw.org/en/reports/2008/05/04/targeting-blacks>.

59. For a discussion of various theories of inequality, see James E. Conyers, *Racial Inequality: Emphasis on Explanations*, 26 WESTERN J. BLACK STUDIES 249 (2002).

60. See generally ASPEN INST. ROUNDTABLE ON COMMUNITY CHANGE, STRUCTURAL RACISM AND COMMUNITY BUILDING (2004), available at http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659B-4EC8-8F848DF23CA704F5%7D/aspen_structural_racism2.pdf; See also Camara P. Jones, *Levels of Racism: A Theoretic Framework and a Gardener's Tale*, 90 AM. J. PUB. HEALTH 1212, 1212-15 (2000).

61. ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS STANDARD 19-1.1 (American Bar Association, 3d ed. 2004), available at <http://www.abanet.org/crimjust/standards/collateralsanctionwithcommentary.pdf>.

62. See, e.g., *State v. Byrge*, 614 N.W.2d 477, 494 (Wis. 2000) ("Collateral consequences are indirect and do not flow from the conviction"). For a general discussion of the collateral consequences of incarceration, see MAUER & CHESNEY-LIND, EDS., *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* (2003); ANTHONY C. THOMPSON, *RELEASING PRISONERS, REDEEMING COMMUNITIES: REENTRY, RACE, AND POLITICS* (2008).

63. For a comprehensive overview of collateral sanctions, see Nora Demleitner, "Collateral Damage": *No Re-entry for Drug Offenders*, 47 VILL. L. REV. 1027, 1033-47 (2002).

64. See, e.g., Christopher Uggen & Jeff Manza, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 AM. SOC. REV. 777 (2002).

employment (including real estate, nursing, physical therapy, and government employment) and related licensing;⁶⁶ driver's licenses and passports;⁶⁷ educational grants, loans and work assistance;⁶⁸ handgun licenses and military service;⁶⁹ federal welfare benefits;⁷⁰ and public housing.⁷¹ Numerous federal statutes codify collateral consequences upon conviction⁷² — consequences that often impose harsher and longer-lasting penalties than the original criminal sentence.⁷³

These collateral consequences are gravest for black offenders.⁷⁴ Given the staggering racial disparities in incarceration and recidivism rates outlined in Section I *supra*, the various social and economic barriers that attach to a criminal record are magnified in black ex-offender populations. Black urban centers, home to a disproportionate number of ex-offenders,⁷⁵ are already plagued by

65. Voting restrictions are matters of state law. Currently, thirty-five states prohibit felons from voting while they are on parole; two states deny the right to vote to all ex-offenders who have completed their sentences. All but two states place some restrictions on the right to vote for people with felony convictions. The Sentencing Project: Research and Advocacy, *Felony Disenfranchisement Laws in the United States* 1 (2008), available at <http://www.sentencingproject.org/pdfs/1046.pdf>.

66. See, e.g., Nora Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL'Y REV. 153, 156 (1999).

67. KEN ZIMMERMAN & NANCY FISHMAN, NEW JERSEY INST. FOR SOCIAL JUSTICE, ROADBLOCK ON THE WAY TO WORK: DRIVER'S LICENSE SUSPENSION IN NEW JERSEY 4 (2001), available at http://www.njisj.org/reports/roadblock_report.pdf.

68. 20 U.S.C. § 1091(r)(1) (2004) (ineligibility for grant, loan, or work assistance depending on the number of convictions).

69. 10 U.S.C. § 504(a) (2004).

70. 21 U.S.C. § 862a (2004) (denial of benefits and assistance for drug-related convictions).

71. See, e.g., 42 U.S.C. § 13661(a) (2004) ("Any tenant evicted from federally assisted housing by reason of drug-related activity . . . shall not be eligible for federally assisted housing . . .").

72. See U.S. DEP'T OF JUSTICE, OFFICE OF THE PARDON ATTORNEY, FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION (2000), available at http://www.usdoj.gov/pardon/collateral_consequences.pdf.

73. Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067, 1068-78 (2004); see also Gabriel Chin, *Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 259 (2002).

74. See, e.g., Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIOLOGY 937 (2003) available at <http://www.ssc.wisc.edu/cde/cdewp/2002-05.pdf>, at 28-29 (Center for Demography and Ecology, University of Wisconsin-Madison, Working Paper No. 2002-05) [hereinafter *Mark of a Criminal Record*].

75. See, e.g., NANCY G. LA VIGNE & CYNTHIA A. MAMALIAN, PRISONER REENTRY IN GEORGIA 31 (2004), available at http://www.urban.org/UploadedPDF/411170_Prisoner_Reentry_GA.pdf (finding that of 95 percent of Georgia prisoners released to Georgia, 43 percent of them returned to eight counties); LA VIGNE ET AL., *supra* note 48, at 2-3 (finding that in Maryland, 60 percent of released offenders returned to Baltimore; similarly, half of all released Illinois prisoners returned to just one jurisdiction in the state, the City of Chicago).

social and economic adversity that threatens their viability.⁷⁶ As such, the relationship between collateral consequences and race is crucial to the issue of reentry.⁷⁷ Research indicates that several socioeconomic domains that affect individuals, families, and communities, are injured by the processes of removal and reentry.⁷⁸ For black ex-offenders, the most pervasive of these are stigma, economic distress, and the deterioration of social networks.

A. Stigma

Upon reentry into their communities, black ex-offenders are faced with a double stigma of having been incarcerated and of being black.⁷⁹ For black offenders, the nature of the stigma they experience upon reentry is compounded by the effects of racial stigmatization and stereotyping.⁸⁰ In general, offenders are assumed to be dangerous, aggressive, and unworthy of trust,⁸¹ and upon release are met with suspicion and hostility.⁸² Black offenders are additionally often assumed to be unintelligent, lazy, and dishonest.⁸³ The misinterpretation of crime statistics exacerbates the stigma borne by black ex-offenders.⁸⁴ Because race is associated with deviance, irresponsibility, and lawbreaking, “the most innocent of minority youth bear a stigma that connects them with criminality.”⁸⁵ Due to stereotypes regarding their criminality, young black men are more likely to receive intensified scrutiny and to experience adverse police

76. See, e.g., AMY L. SOLOMON ET AL., URBAN INST., FROM PRISON TO WORK: THE EMPLOYMENT DIMENSIONS OF PRISONER REENTRY: A REPORT OF THE REENTRY ROUNDTABLE 13 (2004), available at http://www.urban.org/UploadedPDF/411097_From_Prison_to_Work.pdf.

77. For a discussion of the mutual dependency between collateral consequences and reentry, see Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Conviction and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 BOSTON U. L. REV. 623, 665-74 (2006).

78. See, e.g., DINA R. ROSE ET AL., NAT’L CRIMINAL JUSTICE REFERENCE SERV., DRUGS, INCARCERATION AND NEIGHBORHOOD LIFE: THE IMPACT OF REINTEGRATING OFFENDERS INTO THE COMMUNITY, EXECUTIVE SUMMARY (unpublished final grant report) (2002).

79. For a good discussion of the nature of “stigma,” see John Dovidio et al., *Stigma: Introduction and Overview*, in THE SOCIAL PSYCHOLOGY OF STIGMA 1, 3 (Todd Heatherton et al., eds., 2000).

80. Regina Austin, “*The Shame of It All*”: *Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons*, 36 COLUM. HUM. RTS. L. REV. 173, 178 (2004).

81. See GERHARD FALK, STIGMA: HOW WE TREAT OUTSIDERS 330 (2001).

82. Walter M. Grant et al., *The Collateral Consequences of a Criminal Conviction*, 23 VAND. L. REV. 929, 930 (1970).

83. Austin, *supra* note 80.

84. See Regina Austin, *Crime Statistics, Disparate Impact Analysis, and the Economic Disenfranchisement of Minority Ex-Offenders*, 4 RACE & SOC’Y 177 (2000).

85. Austin, *supra* note 80.

encounters resulting in arrest and incarceration than their white peers.⁸⁶ In fact, research indicates that juvenile justice intervention increases the chance of adult criminal activity most strongly for black offenders.⁸⁷ The imposition of collateral consequences, combined with social representations of black offenders as “natural born,” make the stigma attached to black ex-offenders “nearly impossible to overcome.”⁸⁸

Research shows that families in which one or more parents is incarcerated suffer the effects of significant stigma themselves,⁸⁹ which in turn is magnified by stereotypes suggesting that black parents have poor parenting, socialization, and job-related skills. “Incarcerated parents are considered to be social failures, and this pejorative characterization is exacerbated by underlying assumptions about race and socioeconomic status.”⁹⁰ Black offenders are often stereotyped as totally self-interested, suggesting that if they cared about their families they would not have committed the crime in the first place. The incarceration of a father who happens to be black may also further fuel the stereotype that black families are single-parent, female-headed households.⁹¹ The additional burden of being unable to earn a living due to the combination of being black and being an offender⁹² brings additional stigma and shame of being unable to financially support one’s family.⁹³

Black communities suffer from the stigma of incarceration, including the assumption that a community’s high incarceration rate is proof that it is not a good place to live or conduct business.⁹⁴ The revocation of convicted felons’ right to vote “stigmatizes the entire community as being unfit to participate in the political process”⁹⁵ and proves that collateral consequences are real. This is especially

86. *Id.*

87. Jon G. Bernburg & Marvin D. Krohn, *Labeling, Life Chances and Adult Crime: The Direct and Indirect Effects of Official Intervention in Adolescence on Crime in Early Adulthood*, 41 *CRIMINOLOGY* 1287, 1314 (2003).

88. Austin, *supra* note 80, at 178.

89. DONALD BRAMAN, *DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA* 165-66 (2004); *see also* Todd R. Clear et al., *Incarceration and the Community: The Problem of Removing and Returning Offenders*, 47 *CRIME & DELINQ.* 335, 341 (2001).

90. NAT’L CTR. ON FATHERS AND FAMILIES, *ROUNDTABLE ON CONSTRUCTING AND COPING WITH INCARCERATION AND FAMILY RE-ENTRY: PERSPECTIVES FROM THE FIELD* 13 (2001), *available at* <http://www.ncoff.gse.upenn.edu/roundtable/incarcerated-rt.pdf>.

91. Austin, *supra* note 80, at 181.

92. *See infra* text accompanying notes 83-91, 100-123.

93. BRAMAN, *supra* note 89, at 174.

94. Clear et al., *supra* note 89.

95. Austin, *supra* note 80, at 183.

important considering the research that indicates that civic participation might increase the likelihood of successful ex-offender reentry.⁹⁶ Ultimately, the stigma assigned to black ex-offenders exacerbates a devastating cycle in which ex-offenders are unable to successfully integrate into their communities; their communities experience social, economic and political decline; and that decline contributes to the conditions that foster stigma-inducing crime in the first place.

B. Economic Distress

Incarceration has tremendous adverse effects on the financial capacity of ex-offenders and their neighborhoods — effects again magnified by race. Research on the employment probabilities and incomes of released ex-offenders reflects a consistently strong negative effect of incarceration on financial well-being.⁹⁷ One study of employers in four major metropolitan cities found that they were more reluctant to hire ex-offenders than any other group of disadvantaged persons.⁹⁸ Two-thirds of all employers refuse to knowingly hire an ex-offender,⁹⁹ and a criminal record reduces the likelihood of an employer callback by 50 percent.¹⁰⁰ Evidence suggests that today's employers faced with black male job applicants are more likely than ever before to suspect a criminal record and on that basis alone decline to offer the job.¹⁰¹ Even employers who do not check the criminal backgrounds of their applicants tend to avoid hiring black men generally — a discriminatory aversion that reduces employment outcomes for young black men.¹⁰² The negative

96. See, e.g., Gordon Bazemore & Jeanne Stinchcomb, *Civic Engagement and Reintegration: Toward a Community-Focused Theory and Practice*, 36 COLUM. HUM. RTS. L. REV. 241 (2004).

97. See, e.g., Bruce Western, *The Impact of Incarceration on Wage Mobility and Inequality*, 67 AM. SOC. REV. 526, 541 (2002); Daniel Nagin & Joel Waldfogel, *The Effect of Conviction on Income Through the Life Cycle* (Nat'l Bureau of Econ. Research, Working Paper No. 4551, 1993), abstract available at <http://www.nber.org/papers/w4551.pdf>; Richard Freeman, *The Relation of Criminal Activity to Black Youth Employment*, 16 REV. BLACK POL. ECON. 99, 105 (1987).

98. HARRY HOLZER, STEVEN RAPHAEL & MICHAEL STOLL, URBAN INST., CAN EMPLOYERS PLAY A MORE POSITIVE ROLE IN PRISONER REENTRY? 3-4 (March 21, 2000), available at http://www.urban.org/uploadedPDF/410803_PositiveRole.pdf.

99. PRISON TO HOME, *supra* note 17, at 31.

100. Devah Pager, *Double Jeopardy: Race, Crime, and Getting a Job*, 2005 WIS. L. REV. 617, 641 (2005) (discussing the extent to which employers use criminal histories in hiring decisions, the extent to which race is a major barrier to employment, and the effect of a criminal record on black versus white applicants).

101. *Mark of a Criminal Record*, *supra* note 74, at 9.

102. Harry J. Holzer, *The Labor Market and Young Black Men: Updating Moynihan's*

relationship between incarceration and employment has long been attributed to the stigma of criminal conviction.¹⁰³

Employers are more wary of black ex-offenders than they are of their white counterparts. The strong association between race and crime in employers' minds suggests that the "true effect" of a criminal record for blacks is even greater than research measurements suggest.¹⁰⁴ Even for ex-offenders who had careers prior to serving time, incarceration can effectively make prior education and work experience irrelevant to post-conviction opportunities. Even without a criminal record, black job applicants are 24 percent less likely to receive a job offer than white applicants.¹⁰⁵ The callback ratio for white non-offenders relative to white offenders is two to one; the ratio for black applicants is nearly three to one.¹⁰⁶ White applicants *with* criminal records receive more favorable treatment by potential employers than black applicants *without* criminal records.¹⁰⁷ According to one audit, when two similar applicants (one with a criminal record and one without) were sent for the same job opening, the likelihood of getting hired was 40 percent lower for a white applicant with a criminal record but was 60 percent lower for a black applicant *without* a criminal record.¹⁰⁸ Courts have held that the racial disparities in incarceration rates establish that policies against hiring ex-offenders have a disparate impact on minorities seeking jobs.¹⁰⁹

Even without controlling for the growing percentage of the incarcerated black male population — and current statistics indicate that over one third of all young black men are now incarcerated, or on parole or probation¹¹⁰ — the past twenty years have shown a clear

Perspective, THE ANNALS OF THE AM. ACAD. OF POLITICAL & SOC. SCI., Jan. 2009, at 47, available at http://www.urban.org/UploadedPDF/1001111_moynihan_perspective.pdf.

103. See, e.g., Richard D. Schwartz & Jerome H. Skolnick, *Two Studies of Legal Stigma*, 10 SOCIAL PROBLEMS 133 (1962); HARRY J. HOLZER, WHAT EMPLOYERS WANT: JOB PROSPECTS FOR LESS-EDUCATED WORKERS (1996).

104. See, e.g., Shawn Bushway, *Labor Market Effects of Permitting Employer Access to Criminal History Records*, 20 J. CONTEMP. CRIM. JUST. 276, 278-288 (2004).

105. Marc Bendick, Jr. et al., *Measuring Employment Discrimination through Controlled Experiments*, 23 REV. BLACK POL. ECON 25, 29-31 (1994); Pager, *supra* note 100, at 646.

106. Pager, *supra* note 100, at 642.

107. *Id.* at 645.

108. *Mark of a Criminal Record*, *supra* note 74.

109. Miriam J. Aukerman, *Barriers to Reentry: Legal Strategies to Reduce Recidivism and Promote the Success of Ex-Offenders*, 1 MICHIGAN CRIM. L. ANN. J. 4 (2003), available at http://www.michbar.org/criminal/pdfs/CLA_Barriers.pdf [hereinafter *Legal Strategies*].

110. Steven Raphael, *The Impact of Incarceration on the Employment Outcomes of Former Inmates: Policy Options for Fostering Self-Sufficiency and an Assessment of the Cost-Effectiveness of Current Corrections Policy* (July, 2007) (paper presented for the Institute for

decline in employment for black and a widening gap between black and white employment rates.¹¹¹ It is well documented that racial minorities are overrepresented in the lowest paid and least desirable jobs — a form of occupational segregation most pronounced for young black men.¹¹² Various factors contribute to decreasing employment opportunities for black, notably employer discrimination against black men and the effects of urban segregation on employer demand.¹¹³ Moreover, research suggests that the basic skills of young black workers are not as well matched to shifting labor demands as are their white counterparts.¹¹⁴

Employers' tendency to locate away from urban centers yields additional employment encumbrances for black residents who lack transportation to and information about suburban job opportunities.¹¹⁵ The contacts that provide ties to legitimate employment — including social networking, community and online job referral networks, job fairs and career development classes — are weakened as a result of incarceration.¹¹⁶ Black ex-offenders living in minority communities are isolated from the "natural" job networks that result simply from being in proximity to employed individuals who can provide information about and access to job opportunities.¹¹⁷ This substantially reduces the likelihood of securing employment that provides a living wage as well as opportunities for professional development or advancement.¹¹⁸ Ex-offenders often find themselves readopting lifestyles based on idle time and pre-prison associations, which impede adaptation to employment.¹¹⁹

Prison time channels inmates away from education and skilled

Research on Poverty Working Conference), available at <http://169.229.141.182/faculty/sraphael/raphael-july-2007.pdf>.

111. Holzer, *supra* note 102, at 4.

112. See Paul E. Gabriel et al., *The Relative Occupational Attainment of Young Blacks, Whites, and Hispanics*, 57 SOUTHERN ECON. J. 35, 42-3 (1990).

113. Holzer, *supra* note 102, at 7.

114. See Ronald F. Ferguson, *Shifting Challenges: Fifty Years of Economic Change Toward Black-White Earnings Equality*, in AN AMERICAN DILEMMA REVISITED: RACE RELATIONS IN A CHANGING WORLD (C. Obie, ed., 1996) (arguing that employment and wage disparities between blacks and whites is explained by skills-based market changes to which whites have responded to better than blacks).

115. Holzer, *supra* note 102, at 8.

116. Bruce Western et al., *The Labor Market Consequences of Incarceration* 4-5 (Princeton University Industrial Relations Section, Working Paper No. 450, 2001), available at <http://www.irs.princeton.edu/pubs/pdfs/450.pdf> [hereinafter *Consequences of Incarceration*].

117. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* 25-50 (1996).

118. *Id.*

119. See generally HARLAND PADFIELD & ROY WILLIAMS, *STAY WHERE YOU ARE: A STUDY OF UNEMPLOYABLES IN INDUSTRY* (1973).

occupations and into unstable jobs with low wages, no benefits, and little opportunity for advancement.¹²⁰ The kinds of jobs ex-offenders have traditionally been eligible to fill (i.e., blue collar and manufacturing jobs) are steadily decreasing in our economy. In addition, individuals with felony convictions are statutorily barred from many jobs.¹²¹ The list of employment bans has increased over the last decade, while at the same time the number of persons exiting incarceration has increased.¹²² There are no federal programs designed exclusively to help ex-offenders find employment.¹²³ Furthermore, post-release supervision presents an employment obstacle for ex-offenders because it interferes with work schedules and disrupts employers' business activities.¹²⁴ Black ex-offenders often respond to their bleak employment opportunities by withdrawing from the labor market altogether.¹²⁵ With opportunities for careers with real earning capacity foreclosed, ex-offenders are often left with only illegitimate employment opportunities.¹²⁶ Eventually ex-offenders are often recycled back into the prison system to continue the cycle of socioeconomic segregation that led many of them into criminal activity in the first place.

The economic distress caused by incarceration not only affects ex-offenders. Short term labor supplies drop when offenders are removed from their communities for incarceration, but these offenders' return saturates the market with disadvantaged workers.¹²⁷ In the long run, the cycle of removal and reentry may affect

120. See, e.g., John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, in CRIME AND JUSTICE, VOLUME 26: PRISONS (Michael Tonry & Joan Petersilia eds., 1999); Daniel Nagin & Joel Waldfogel, *The Effect of Conviction on Income Through the Life Cycle*, 18 INT'L REV. L. & ECON. 25 (1998).

121. See generally Karol Lucken & Lucille Ponte, *A Just Measure of Forgiveness: Reforming Occupational Licensing for Ex-Offenders Using BFOQ Analysis*, 30 LAW & POLICY 46 (2008) (discussing the obstacles imposed by statutes and occupational licensing requirements).

122. DEBBIE MUKAMAL, U.S. DEP'T OF LABOR, FROM HARD TIME TO FULL TIME: STRATEGIES TO HELP MOVE EX-OFFENDERS FROM WELFARE TO WORK (2001), available at http://www.hirenetwork.org/pdfs/From_Hard_Time_to_Full_Time.pdf.

123. U.S. DEP'T OF JUSTICE, FEDERAL BUREAU OF PRISONS: EMPLOYMENT INFORMATION HANDBOOK 4 (2006), available at http://www.reentrymediaoutreach.org/pdfs/bop_employment_manual_updated.pdf.

124. See, e.g., JOHN RAKIS, *Improving the Employment Rates of Ex-Prisoners Under Parole*, 69 FEDERAL PROBATION 4 (2005).

125. Holzer, *supra* note 102, at 8.

126. See MERCER SULLIVAN, "GETTING PAID:" YOUTH CRIME AND WORK IN THE INNER CITY (1989) [hereinafter GETTING PAID], for a discussion of the relationship between criminality and employment opportunities. For a general discussion of the overlap between legal and illegal work by ex-offenders, see JEFFREY FAGAN & RICHARD B. FREEMAN, CRIME AND WORK (1999).

127. Bruce Western & Katherine Becket, *How Unregulated is the U.S. Labor Market: The Penal System as a Labor Market Institution*, 104 AM. J. SOCIOLOGY 1030 (1999).

employers' willingness not only to hire ex-offenders but to locate in their communities.

The fact that ex-offenders' opportunities to access credit and financial services are limited adds to their struggle to attain economic self-sufficiency through employment is. Under federal law, a lender may consider a small business loan applicant's criminal arrests or convictions in determining that applicant's creditworthiness.¹²⁸ The federal government is largely responsible for the proliferation of mandatory disclosures of criminal history. "As lenders increasingly rely upon federally insured credit instruments, federal agencies' inquiries into criminal histories for informational and underwriting procedures effectively disclose the information to prospective lenders," which has troubling effects in the context of home mortgage and small business loans.¹²⁹

The restrictions placed on credit yield further stigmatizing effects for the ex-offender. The availability of, and access to, financial services is central to modern citizenship. Credit opens economic and social opportunities and enables credit-holders to be fully participating consumers. As Robert Suggs explains, "[e]xclusion or disadvantage in a significant economic sphere must create major distortions in political participation, popular culture, self-employment, personal income, and especially aggregate wealth."¹³⁰ In addition, private retirement income and inheritances are scarce among black Americans, and ownership of homes, stocks, and businesses remains disproportionately out of black American's hands.¹³¹ Barriers to credit and wealth translate into barriers to food, education, transportation, and housing.

Limitations on ex-offender access to credit exacerbate the economic disparities between white and black. Barriers to equal financial opportunity have historically plagued black communities,

128. Banks' reliance on this practice is unclear, since banks are not required to disclose whether they consider criminal history in making loans. See *A.B. & S. Auto Serv. v. South Shore Bank*, 962 F.Supp. 1056 (N.D. Ill. 1997) (legitimizing a form of lending discrimination that erects additional barriers to reintegration, both for ex-offenders themselves, and for the communities attempting to assist them to secure financial stability and independence). The Small Business Administration requires criminal history disclosure (in SBA Form 912) in its loan applications. See SMALL BUSINESS ADMINISTRATION, FINANCIAL ASSISTANCE FORMS, STATEMENT OF PERSONAL HISTORY, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/tools_sbf_finasst912.pdf.

129. Taja-Nia Y. Henderson, Note, *New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders*, 80 N.Y.U. L. REV. 1237, 1244 (2005).

130. Robert E. Suggs, *Poisoning the Well: Law & Economics and Racial Inequality*, 57 HASTINGS L.J. 255, 256 (2005).

131. BETSY LEONDAR-WRIGHT ET AL., UNITED FOR A FAIR SOCIETY, STATE OF THE DREAM 2005: DISOWNED IN THE OWNERSHIP SOCIETY I (2005).

and racial income inequalities have remained constant for five decades.¹³² One study found that black mortgage applicants are twice as likely to be rejected as similarly-situated white applicants.¹³³ While non-white borrowers are more likely overall to be denied credit than white borrowers, "loan denial rates are significantly higher for black-owned firms than for white-owned firms even after taking into account differences in an extensive array of measures of creditworthiness and other characteristics."¹³⁴ In addition, lenders have long assigned higher down payments for black borrowers than for white borrowers.¹³⁵ Sub-prime lending is the norm in black communities, where residents can participate in the market but only at a significantly higher cost and with far greater risks than in mainstream markets.¹³⁶ Add to this the saturation of black communities with predatory lending stores that prey on residents' inability to secure market loans, and the freezing-out of ex-offenders from traditional banking institutions. Finally, audit studies show that racial discrimination persists in American housing markets.¹³⁷ Black Americans continue to face discrimination when searching for housing.¹³⁸ This discrimination manifests itself in the denial of information regarding available housing units, significant levels of adverse treatment with respect to housing inspection, reduced likelihood of being offered rent incentives, and geographic steering on the basis of neighborhood racial composition.¹³⁹ Combined with a lack of employment opportunities, the exclusion of black ex-

132. U.S. CENSUS BUREAU, U.S. DEPT OF COMMERCE, STAT. ABSTRACT OF THE U.S. 2001, at 443, tbls. 661 & 662 (2001).

133. Alicia H. Munnell et al., *Mortgage Lending in Boston: Interpreting HMDA Data* (Federal Reserve Nat'l Bank, Working Paper No. 92-7, 1992), available at http://www.bos.frb.org/economic/wp/wp1992/wp92_7.pdf.

134. David Blanchflower et al., *Discrimination in the Small Business Credit Market*, 85 REV. ECON. & STAT. 930, 942 (2003).

135. See generally STEPHEN GRANT MEYER, AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS (2000).

136. See generally U.S. DEP'T OF HOUSING AND URBAN DEV., UNEQUAL BURDEN: INCOME AND RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA (2000), available at http://www.huduser.org/Publications/pdf/unequal_full.pdf.

137. See, e.g., Harry Holzer & Jens Ludwig, *Measuring Discrimination in Education: Are Methodologies from Labor and Markets Useful?* 105 THE TEACHERS COLLEGE RECORD 1147 (2003).

138. MARGERY A. TURNER, URBAN INST., THE PERSISTENCE OF DISCRIMINATION IN U.S. HOUSING MARKETS (2008), available at http://www.prrac.org/projects/fair_housing_commission/chicago/turner.pdf.

139. MARGERY A. TURNER ET AL., U.S. DEP'T OF HOUSING & URBAN DEV., DISCRIMINATION IN METROPOLITAN HOUSING MARKETS: NATIONAL RESULTS FROM PHASE I HDS 2000, FINAL REPORT 3-1, 3-2, 3-3, 3-12 (2002), available at http://www.urban.org/UploadedPDF/410821_PhaseI_Report.pdf.

offenders from the financial and credit markets effectively keeps predominantly black communities in economic distress.

The obstacles to finding employment and economic self-sufficiency can be insurmountable and eventually lead to homelessness.¹⁴⁰ The homeless population is disproportionately black: According to the most recent annual homelessness report made to Congress, black are “considerably more likely to be homeless” than poor persons of any other white or minority group.¹⁴¹ Black households are three times more likely to become homeless than the majority white population.¹⁴² Of single homeless adults (who are predominantly male), forty percent are black.¹⁴³ Incarceration and homelessness are fundamentally linked: homeless persons are arrested more frequently, are incarcerated for longer periods of time, and are re-arrested at higher rates than people with stable housing.¹⁴⁴ The combination of incarceration, race and homelessness is simply a national tragedy.

C. Deterioration of Social Networks

Incarceration has profound effects on social bonds, especially in black communities. Given racial disparities in incarceration rates, the social effects of incarceration are magnified in black families and communities.¹⁴⁵ Incarceration “alters the dynamics of community relationships” by straining family relationships, isolating offenders’ families from their neighbors, and arousing community suspicion and fear.¹⁴⁶ The cycle of incarceration and reentry destabilize communities by producing high residential mobility, characterized by high property rentals, low homeownership rates, and few long-term

140. See, e.g., PETER H. ROSSI, *DOWN AND OUT IN AMERICA* (1989).

141. U.S. DEP’T OF HOUSING & URBAN DEV., *THE THIRD ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS* 23 (2008), available at <http://www.hudhre.info/documents/3rdHomelessAssessmentReport.pdf>.

142. See *CAUSES OF HOMELESSNESS AMONGST ETHNIC MINORITY POPULATIONS* (Office of the Deputy Prime Minister, London), available at <http://www.communities.gov.uk/documents/corporate/pdf/145165.pdf>.

143. MARTHA R. BURT ET AL., *URBAN INST., HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE* 16 (1999), available at <http://www.urban.org/UploadedPDF/homelessness.pdf>.

144. *Keeping Homeless People Out of the Justice System: The HCH Role*, 8.6 HEALTH CARE FOR THE HOMELESS CLINICIANS’ NETWORK 1-2 (2004), available at http://www.nhchc.org/Network/HealingHands/2004/HealingHands12_17_04.pdf.

145. William A. Darity Jr. & Samuel L. Myers Jr., *Family Structure and the Marginalization of Black Men: Policy Implications*, in *THE DECLINE IN MARRIAGE AMONG AFRICAN-AMERICANS: CAUSES, CONSEQUENCES, AND POLICY IMPLICATIONS* 264-65 (M. Belinda Tucker & Claudia Mitchell-Kernan, eds., 1995).

146. ROSE ET AL., *supra* note 78, at 7-8.

residents.¹⁴⁷ This, in turn, isolates community members from each other by minimizing positive interaction and community investment, compounding anonymity, and reducing residents' commitment to their neighborhoods.¹⁴⁸

Incarceration leads to the social withdrawal of offenders, their families, and their communities. When residents are constantly in flux and have little attachment to their homes, neighbors, or communities, the resulting social disorganization substantially weakens informal social controls and enables crime to flourish.¹⁴⁹ Given the spatial concentration of incarceration,¹⁵⁰ some neighborhoods are more damaged than others by the removal and return of offenders. In neighborhoods where large numbers of ex-offenders live, residents may simply stop socializing for fear that they will be targeted for increased police surveillance.¹⁵¹ High concentrations of returning offenders may actually drive up crimes rates in disadvantaged communities.¹⁵² As a general rule, crime fosters residents' withdrawal from community participation.¹⁵³ This generates a vicious cycle in which residents fail to assist in the combating of crime, which in turn leads to an expansion in crime.¹⁵⁴

Understandably, offenders returning from prison often experience psychological and social anxiety about their standing in the community.¹⁵⁵ They may also lack the core social and psychological skills to navigate through the various issues related to integrating back into community. Unfortunately, the pathway to becoming an "outcast" or "deviant" is far easier than overcoming the obstacles to becoming a connected community member.¹⁵⁶ Not

147. IMPRISONING COMMUNITIES, *supra* note 31, at 74.

148. *Id.* at 73-74.

149. *Id.* at 73.

150. See *Reentry and Social Capital*, *supra* note 47, at 184-86 (describing the relationship between social organization and crime).

151. IMPRISONING COMMUNITIES, *supra* note 31, at 75.

152. See generally Todd R. Clear et al., *Incarceration and the Community: The Problem of Removing and Returning Offenders*, 47 CRIME & DELINQUENCY 335 (2001).

153. See generally WESLEY G. SKOGAN, *DISORDER AND DECLINE: THE SPIRAL OF DECAY IN AMERICAN NEIGHBORHOODS* (1990).

154. See Andrew E. Taslitz, *Wrongly Accused Redux: How Race Contributes to Convicting the Innocent: The Informants Example*, SOUTHWESTERN UNIV. L. REV. (forthcoming 2009) (on file with author).

155. Faye Taxman, *Brick Walls Facing Reentering Offenders*, in PRISONER REENTRY AND COMMUNITY POLICING: STRATEGIES FOR ENHANCING PUBLIC SAFETY 1-18, (Urban Inst. Justice Policy Ctr., Working Paper, 2004), available at http://www.urban.org/UploadedPDF/900743_COPS_roundtable.pdf.

156. See JOHN IRWIN, *THE FELON* (1970); SHAD MARUNA, *MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES* (2001).

unexpectedly, incarceration reduces participation in social associations and undermines community solidarity.¹⁵⁷ At the same time, it can deepen ex-offenders' attachment to gangs.¹⁵⁸ Upon release, ex-offenders' social networks are often limited to people in frequent contact with the criminal justice system.¹⁵⁹ For many ex-offenders, gangs represent "the most accessible resource for stabilizing their economic and social prospects" — an immediate post-release path to income, housing, and food.¹⁶⁰ The multi-faceted social instability facing ex-offenders only increases opportunities for re-offending.¹⁶¹

Adding to this challenge is the fact that ex-offenders are held to a standard of behavior that the average citizen would find too onerous to abide by, one which increases the likelihood that an ex-offender will be found in violation for failing to abide by the rules. Community supervision (parole or probation) places severe restrictions on offenders that range from spatial limitations (restriction from certain places), strict scheduling responsibilities (curfews and appointments), restriction from associating with certain people (other offenders even if they are family members), and regulations on employment.¹⁶² As a result, offenders often feel resentment toward the criminal justice system as well as a sense of unfairness at restrictions that impair their ability to integrate into their communities. Technical violations, like missed parole appointments and curfew violations, represent an increasing percentage of new prison intakes.¹⁶³ The punitive nature of supervision sends a message to the offender about the unlikelihood of his or her success as a citizen.

At a time when ex-offenders must find a place to live, find a job, and secure various necessities (such as a driver's license or Social

157. JAMES P. LYNCH ET AL., URBAN INST., CRIME, COERCION, AND COMMUNITY: THE EFFECTS OF ARREST AND INCARCERATION POLICIES ON INFORMAL SOCIAL CONTROL IN NEIGHBORHOODS 27 (2002), available at www.ncjrs.gov/pdffiles1/nij/grants/195170.pdf.

158. See, e.g., SUDHIR VENKATESH, AMERICAN PROJECT: THE RISE AND FALL OF A MODERN GHETTO 133-34 (2000); MARTIN SANCHEZ JANKOWSKI, ISLANDS IN THE STREET: GANGS AND AMERICAN URBAN SOCIETY 272-76 (1991).

159. See generally GETTING PAID, *supra* note 126.

160. RICHARD GREENBERG, NEW JERSEY INSTITUTE FOR SOCIAL SCIENCE, DO NO HARM: A BRIEFING PAPER ON THE REENTRY OF GANG-AFFILIATED INDIVIDUALS IN NEW JERSEY 7 (2007).

161. See Mark S. Fleisher & Scott H. Decker, *Going Home, Staying Home: Integrating Prison Gang Members into the Community*, 5 CORRECTIONS MGMT. Q. 65, 66 (2001).

162. Taxman, *supra* note 155, at 8.

163. PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PROBATION AND PAROLE STATISTICS (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>.

Security card), they also face the challenge of establishing or repairing familial relationships. Ex-offenders may exit incarceration only to find that their families have moved to a different location or are hostile to their return.¹⁶⁴ A former spouse or partner may have moved on to another relationship and may resist the ex-offender's reunification with children.¹⁶⁵ Former employers and landlords may now refuse to work with them. At every level of social contact — children, partners, family, friends, neighborhoods, extended networks — ex-offenders face constant re-evaluation regarding whether they are worthy (in terms of trust, values, and norms) of social reconnection and rebuilding.

Most ex-offenders transitioning out of prison initially live with family members, but family dynamics may change during the ex-offender's absence. A family that has struggled during an offender's absence and incarceration faces many barriers to successfully integrating a returning ex-offender back into the family, including new relationships, limited finances, feelings of resentment, pressures from former peer groups, and barriers to finding housing and employment.¹⁶⁶ Families are often unprepared for the invasiveness of post-release supervision.¹⁶⁷ Without a sufficient understanding of the basic procedures associated with release, families can unknowingly contribute to an ex-offender's likelihood of returning to prison by not encouraging adherence to curfew, or by using illegal substances in the presence of the ex-offender. Changes in family composition during incarceration can prevent ex-offenders from resuming familial roles upon reentry.¹⁶⁸ The stress of a difficult reentry into the family may increase the chance of recidivism, and chronic offenders face a heightened risk of separation and divorce.¹⁶⁹

164. See Fleisher & Decker, *supra* note 161.

165. ROSE ET AL., *supra* note 78, at 7-8.

166. HIDDEN COSTS, *supra* note 43, at 7.

167. Post-release supervision can be very invasive — but such invasiveness does not necessarily correspond to decreased criminality. Increasing the level of supervision has not been found to reduce recidivism — it merely increases the likelihood of detecting technical violations. See JOAN PETERSILIA, U.S. DEP'T OF JUSTICE, PERSPECTIVES ON CRIME AND JUSTICE, A DECADE OF EXPERIMENTING WITH INTERMEDIATE SANCTIONS: WHAT HAVE WE LEARNED? 88 (1998), available at <http://www.ncjrs.gov/pdffiles/172851.pdf>. On the other hand, supervision strategies that include rehabilitation or treatment, as opposed to mere surveillance, have been shown to reduce crime. See LAWRENCE SHERMAN ET AL., U.S. DEP'T OF JUSTICE, PREVENTING CRIME: WHAT WORKS, WHAT DOESN'T, WHAT'S PROMISING (1998), available at <http://www.ncjrs.gov/works/>.

168. See Kathleen McDermott & Roy D. King, "Prison Rule 102: Stand by Your Man": The Impact of Penal Policy on the Families of Prisoners, in PRISONERS' CHILDREN: WHAT ARE THE ISSUES? 50, 50 (1992).

169. John H. Laub et al., *Trajectories of Change in Criminal Offending: Good Marriages*

Parents exiting incarceration endure the added strain of reconnecting with their children, which may involve re-establishing custody or visitation rights as well as providing financial support. Research suggests that parental separation caused by incarceration has profound consequences on children, including impaired parent-child bonding, impaired socio-emotional development, developmental regressions, traumatic behaviors, rejection of limits on behavior, delayed maturational progress, intergenerational crime, and incarceration.¹⁷⁰ The negative effects of incarceration on children are exacerbated in black youth. Various social indicators demonstrate that black children lag far behind white children generally in regard to graduation rates, the incidence of certain diseases, test scores, infant mortality rates, and school quality; however, they surpass their white counterparts in incarceration rates, drop-out rates, drug use, and teenage pregnancy.¹⁷¹ For virtually every behavioral and educational outcome — including likelihood of dropping out of high school or enrolling in college, likelihood of having children outside of marriage, and rates of incarceration — “young black men now lag behind every other race and gender group in the U.S.”¹⁷²

Unfortunately, the pervasive removal of male offenders from their communities contributes to a general devaluation of males, which further attenuates social bonds for children in the community.¹⁷³ Research indicates that women are reluctant to become seriously involved with men who are likely to be incarcerated,¹⁷⁴ and that the decreased chance of employment accompanying incarceration may yield a decrease in marriageability.¹⁷⁵ Only about 20 percent of black youth are currently growing up in two-parent families (compared to over half of white and Hispanic youth).¹⁷⁶ The mass incarceration of black men has important intergenerational consequences given that children who

and *Desistance Process*, 63 AM. SOC. REV. 225, 232 (1998).

170. KATHERINE GABEL & DENISE JOHNSTON, *Effects of Parental Incarceration*, in CHILDREN OF INCARCERATED PARENTS 59, 84 (1995).

171. David Hall, *Black Children and the American Dilemma: The Invisible Tears of Invisible Children*, 26 B.C. THIRD WORLD L.J. 9, 12-14 (2006).

172. Bushway, *supra* note 104, at 5.

173. See Robert J. Sampson & John H. Laub, *A Life-Course Theory of Cumulative Disadvantage and the Stability of Delinquency*, in DEVELOPMENTAL THEORIES OF CRIME AND DELINQUENCY 133, 142 (Terence P. Thornberry ed., 1993).

174. See TERRY WILLIAMS & WILLIAM KORNBLUM, *THE UPTOWN KIDS: STRUGGLE AND HOPE IN THE PROJECTS* 134 (1994).

175. See Sampson & Laub, *supra* note 173, at 142.

176. See CAROLYN HILL ET AL., *AGAINST THE TIDE: HOUSEHOLD STRUCTURE, OPPORTUNITIES, AND OUTCOMES AMONG WHITE AND MINORITY YOUTH* (forthcoming 2009).

grow up without both biological parents are more likely to become incarcerated than children who grow up in a household with both parents present.¹⁷⁷

The denial of crucial social benefits — including food stamps and federally subsidized housing — is a final, and sometimes devastating, blow to ex-offenders attempting to successfully integrate into their communities. Reentry consumes a significant portion of public services because returning offenders have disproportionately high occurrences of chronic diseases, no health insurance, no homes, no jobs, and few skills.¹⁷⁸ Federal law gives local housing agencies leeway to prohibit ex-offenders from public housing premises and to exclude housing applicants with an arrest history, even if no arrest ever led to a conviction.¹⁷⁹ The lack of available food and housing make it difficult for ex-offenders to find employment, and a lack of employment makes it impossible for ex-offenders to secure food and housing. An inability to access food stamps and public housing may make it impossible for parents to reunite with their children, and it may prevent them from creating a suitable living environment, which in turn leads to educational difficulties for children as well as a lack of parental supervision and even abuse.¹⁸⁰ Given all these obstacles, ex-offenders may simply return to crime in order to fulfill their financial needs.

The correlation between incarceration and race is clear. The chance of going to prison is nearly six times higher for black Americans than for white Americans.¹⁸¹ Over one third of all black men will enter prison in their lifetime.¹⁸² Once they are incarcerated,

177. Holzer, *supra* note 102, at 6. Conversely, increased contact with families during incarceration results in decreased recidivism rates. See, e.g., Toni Johnson et al., *Developing Quality Services for Offenders and Families: An Innovative Partnership*, in CHILDREN WITH PARENTS IN PRISON: CHILD WELFARE, POLICY, PROGRAM, AND PRACTICE ISSUES 127, 144 (Cynthia Seymour & Creasie Finney Hairston eds., 2001).

178. CTR. FOR BEST PRACTICES, NAT'L GOVERNORS ASSOCIATION, IMPROVING PRISONER REENTRY THROUGH STRATEGIC POLICY INNOVATIONS 4 (2005), available at <http://www.nga.org/Files/pdf/0509PRISONERREENTRY.pdf>.

179. FEDERAL BUREAU OF PRISONS, U.S. DEP'T OF JUSTICE, EMPLOYMENT INFORMATION HANDBOOK 11 (2005).

180. Ex-offenders who are parents may become so overwhelmed by their economic situation that they develop physical and mental health problems and engage in abusive behavior toward themselves and their children. PATRICIA ALLARD, THE SENTENCING PROJECT, LIFE SENTENCES: DENYING WELFARE BENEFITS TO WOMEN CONVICTED OF DRUG OFFENSES 8, 10-12 (2002), available at www.sentencingproject.org/pdfs/9088.pdf; Joan Petersilia, *When Prisoners Return to the Community: Political, Economic and Social Consequences*, 9 SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY 1 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/184253.pdf>.

181. See U.S. Dep't of Justice, *supra* note 1.

182. *Id.*

black inmates serve longer sentences than white inmates who have been convicted of the exact same crimes.¹⁸³ Upon their release, black ex-offenders return to the same communities they found themselves in when they committed their crimes in the first place — communities where the devastating social effects of incarceration are magnified by race.¹⁸⁴ The challenges posed to reentry by the collateral consequences of incarceration are exacerbated for black ex-offenders and black urban communities. From the moment of reentry,¹⁸⁵ to attempting everyday tasks — finding a place to live, searching for a job, making contact with family, finding health treatment — black ex-offenders face barriers caused by their incarceration *and* by their race. The question becomes: How do we remedy racial disparities in incarceration rates — and, more importantly, address the socioeconomic disparities that underlie them?

IV. The Power of Reentry to Counteract Racism

The reentry of black ex-offenders presents an opportunity to directly confront racism. Black ex-offenders embarking on reentry represent a concrete population that would benefit from specific strategies for overcoming socioeconomic racial disparities and racism. The process of reentry may promote the interrelated benefits of long-term integration (including active community participation, rights protection, and pro-social contributions) and decreased recidivism for ex-offenders and their communities. Black Americans are so disproportionately harmed by the collateral consequences of incarceration that racial equity must be at the very core of prisoner reentry planning and programming. One cannot assume that because a disproportionate majority of incarcerated offenders are black, race is somehow already integrated into prisoner reentry programs currently in place in correctional facilities and communities across the country. It is not.¹⁸⁶ Race must be deliberately and explicitly

183. PAIGE M. HARRISON & ALLEN J. BECK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2004 8 (2005).

184. See Darity & Myers Jr., *supra* note 145, at 263.

185. For a discussion of the crucial challenges accompanying the moment of release, see PRISON TO HOME, *supra* note 17.

186. In general, community-building organizations and related fields give little attention to race. See, e.g., REBECCA STONE & BENJAMIN BUTLER, CORE ISSUES IN COMPREHENSIVE COMMUNITY BUILDING INITIATIVES: EXPLORING POWER AND RACE (Chapin Hall Ctr. for Children at the Univ. of Chi. ed., 2000). For suggestions on how to foster racial inclusion generally, see ILANA SHAPIRO, TRAINING FOR RACIAL EQUITY AND INCLUSION: A GUIDE TO

confronted by prisoner reentry programming.

The paramount achievement of any successful offender reentry program is a significant decrease in recidivism rates. To decrease recidivism — that is, to decrease the likelihood that ex-offenders will commit new offenses and thereby be re-incarcerated — reentry programming must confront and remedy those factors that contribute to criminal behavior in the first place. Research has shown that criminal behavior can be predicted for individual offenders on the basis of specific factors.¹⁸⁷ Some factors, like criminal history, are “static” and unchangeable while others, like social affiliations, are “dynamic” and changeable.¹⁸⁸ The “strongest predictors of recidivism” include “identification or close relationship with criminal peers, attitudes supportive of a criminal lifestyle, and lack of education or employment skills”¹⁸⁹ — factors that correlate with race.¹⁹⁰ At its most basic and indisputable level, race affects our life situations and limits or expands our available options for action.¹⁹¹ It determines how other people view us and interact with us and, as indicated throughout this article, affects the quality of our education, income, and health. Reentry programming can target changeable predictors of recidivism that correlate with race and thereby decrease recidivism rates by counteracting socioeconomic conditions disproportionately affecting black ex-offenders. Reentry programming can overcome racism by creating opportunities for social and economic parity for ex-offenders.

Efforts to involve the community in the business of reentry through “community justice” and “restorative justice” initiatives are ubiquitous.¹⁹² For example, the Department of Labor distributes

SELECTED PROGRAMS (Aspen Institute ed., 2002), available at <http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659B-4EC8-8F84-8DF23CA704F5%7D/training.pdf>.

187. See, e.g., Paul Gendreau et al., *A Meta-analysis of the Predictors of Adult Recidivism: What Works!*, 34 CRIMINOLOGY 575, 575-76 (1996) (summarizing research of recidivism predictors).

188. See D. A. ANDREWS & JAMES BONTA, *THE PSYCHOLOGY OF CRIMINAL CONDUCT* 81-92 (2nd Ed. 1998).

189. GERALD GAES & NEWTON KENDIG, FED. BUREAU OF PRISONS, *THE SKILL SETS AND HEALTH CARE NEEDS OF RELEASED OFFENDERS* 94 (2002), available at http://www.urban.org/UploadedPDF/410629_ReleasedOffenders.pdf.

190. See *supra* text accompanying notes 104-115 and 165-173.

191. JAMES AUSTIN ET AL., *UNLOCKING AMERICA: WHY AND HOW TO REDUCE AMERICA'S PRISON POPULATION* 7 (JFA Institute ed., 2007), available at <http://www.jfaassociates.com/publications/srs/UnlockingAmerica.pdf>.

192. “Community justice” refers to criminal justice practices that emphasize the community in promoting social control and improving the quality of community life. Examples include: community crime prevention, see, e.g., Susan F. Bennett, *Community Organizations and Crime*, in *COMMUNITY JUSTICE: AN EMERGING FIELD* 31 (David R. Karp, ed. 1998); community policing,

millions of dollars annually to state prison systems for the implementation of “prisoner reentry initiatives” for both “pre-release” and “post-release” services for state and local inmates.¹⁹³ The Department of Justice sponsors “weed and seed” programs at over 250 locations across the country targeted at “weeding out” criminals and “seeding” community services,¹⁹⁴ and the Federal Bureau of Prisons provides reentry halfway houses.¹⁹⁵ The Departments of Labor and Justice, together with various private foundations, co-sponsor a “Ready4Work” program that assists faith-based and community organizations in providing “transition” services for returning ex-offenders.¹⁹⁶ These programs provide important services that participating ex-offenders would otherwise likely go without, and there is preliminary evidence that they may decrease recidivism rates among participants.¹⁹⁷

Yet despite decades of programming and millions of dollars, racial disparities in incarceration and recidivism rates have not decreased. In fact, research indicates that these disparities are *growing*.¹⁹⁸ To illustrate the significance of race on America’s

see, e.g., Kenneth J. Peak & Ronald W. Glensor, COMMUNITY POLICING AND PROBLEM SOLVING (1996); and community courts see, e.g., David B. Rottman, *Community Courts: Prospects and Limits*, 231 NAT’L INST. OF JUST. J. 46 (1996). “Restorative justice” prioritizes the needs of victims within the context of community membership. See, e.g., BURT GALAWAY & JOE HUDSON, RESTORATIVE JUSTICE: INTERNATIONAL PERSPECTIVES 2 (1996); Richard Delgado, *Prosecuting Violence: A Colloquy on Race, Community, and Justice*, 52 STAN. L. REV. 751, 755 (2000).

193. See TASK FORCE FOR FAITH-BASED & COMMUNITY INITIATIVES, U.S. DEP’T OF JUSTICE, FEDERAL FUNDING & SERVICES FOR PRISONER REENTRY 1, available at <http://www.usdoj.gov/fbci/docs/fed-prisoner-reentry-resources.pdf>.

194. U.S. Dep’t of Justice, Weed & Seed, <http://www.ojp.usdoj.gov/ccdo/ws/welcome.html> (last visited Jan. 26, 2009).

195. Fed. Bureau of Prisons, Community Corrections, <http://www.bop.gov/locations/cc/index.jsp> (last visited Jan. 26, 2009).

196. Ready4Work operates in fifteen sites across the country. U.S. Dep’t of Labor, Ready4Work National Contacts, http://www.dol.gov/cfbci/Ready4Work_contacts.htm (last visited Jan. 26, 2009). See also JOSHUA GOOD & PAMELA SHERRID, WHEN THE GATES OPEN, READY4WORK: A NATIONAL RESPONSE TO THE PRISONER REENTRY CRISIS (Public/Private Ventures ed., 2005), available at http://www.ppv.org/ppv/publications/assets/189_publication.pdf.

197. For example, 2007 Ready4Work data indicated a decrease in recidivism rates for black participants: 2.5 percent were re-incarcerated for a new offense within six months (versus 5 percent nationally), and 6.9 percent were re-incarcerated within one year (compared to 10.4 percent nationally). Chelsea Farley & Wendy S. McClanahan, *Ready4Work In Brief: Update on Outcomes; Reentry May Be Critical for States, Cities*, Public/Private Ventures, May 2007, at 1, available at http://www.ppv.org/ppv/publications/assets/216_publication.pdf.

198. See generally MARC MAUER & RYAN S. KING, THE SENTENCING PROJECT, UNEVEN JUSTICE: STATE RATES OF INCARCERATION BY RACE AND ETHNICITY 1 (2007), available at http://sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf.

incarceration policies, a team of researchers recently estimated what the size of today's prison population would be if black Americans had the same incarceration rates as their white counterparts. The result: if rates of incarceration were the same, today's jail and prison populations would decrease by 50 percent.¹⁹⁹ Until racial disparities in incarceration and recidivism rates — and in socioeconomic conditions generally — are explicitly confronted and remedied, there is little reason to believe that the crisis of the mass incarceration of black Americans will improve.

Fortunately, states are beginning to formally implement policy changes to directly address the rising rate of racial disparities in jail and prison populations. Racial impact statements enable legislators to anticipate any unwarranted racial disparities and consider alternative policies that may accomplish legislative goals without accompanying negative racial effects.²⁰⁰ Iowa took the lead in 2008 when Governor Chet Culver signed the nation's first racial impact sentencing bill.²⁰¹ Connecticut soon followed by enacting legislation requiring examination of the racial impact of new sentencing laws prior to passage.²⁰² Wisconsin soon followed, creating a Racial Disparities Oversight Commission designed to reduce racial disparities in criminal justice.²⁰³

Many of the numerous reentry programs across the country have yielded a reduction in participant recidivism rates.²⁰⁴ However, none

199. AUSTIN ET AL., *supra* note 191, at 8.

200. See Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 OHIO ST. J. OF CRIM. L. 19 (2008).

201. HF 2393, signed into law April 17, 2008, requires that "Correctional Impact Statements" include an analysis of the impact on minority populations of any legislation related to a public offense, sentencing, or parole or probation procedures. Iowa Code Ann. § 2.56 (West 2008).

202. Connecticut Public Act 08-143 (2008), available at <http://www.cga.ct.gov/2008/ACT/PA/2008PA-00143-R00HB-05933-PA.htm>.

203. Executive Order 251 was signed by Governor Doyle on May 13, 2008. Wisconsin Racial Disparities Oversight Commission (2008), available at http://oja.wi.gov/section_detail.asp?linkcatid=2533&linkid=1344&locid=97.

204. For example, Chicago's Re-Entry Center has yielded a reduction in participant recidivism rates by providing a highly structured program in which ex-offenders modify behavior patterns that lead to criminal activity. See Chicago Re-Entry Center Results, <http://www.bi.com/content.php?section=services&page=services&detail=chicago> (last visited Jan. 22, 2009). Chicago's Bethel New Life utilizes a three-pronged approach to overcoming the multiple barriers faced by newly released ex-offenders. See Bethel New Life, <http://www.bethelnewlife.org> (last visited Sept. 22, 2008). For examples of other holistic reentry programs, see Fifth Avenue Committee, *Developing Justice in South Brooklyn: A Neighborhood Program Advances Community Justice*, <http://www.bi.com/content.php?section=services&page=services&detail=chicago> (last visited Jan. 22, 2008) (describing Brooklyn's Fifth Avenue Committee's efforts to effect systemic change by addressing fundamental community justice

of these programs has designed offender reentry policy and programs specifically and exclusively to address racial disparities in incarceration or, even more importantly, the socioeconomic inequalities that fundamentally contribute to those disparities.²⁰⁵ Programs designed to counteract racism may not only decrease crime rates and increase public safety — which has long been and continues to be the goal of “reintegration programming” — but they may help to eliminate the effects of racism altogether.

A. Holistic Reentry

Racial disparities in incarceration and recidivism rates may be based on overt racial bias, structural racism,²⁰⁶ or race-based individual or institutional decisions.²⁰⁷ The fact that accurate data on arrests, incarceration and recidivism rates for black males is both voluminous and readily available allows us to address this problem at its most basic level. The Sentencing Project has identified four key aspects to addressing racial disparity in the criminal justice system: acknowledging the cumulative nature of racial disparities which build at each stage of criminal justice from arrest through parole; encouraging communication across players in all decision points of the criminal justice system; recognizing that different decision points

issues); *see also* Corporation for Supportive Housing, <http://www.csh.org> (last visited Jan. 22, 2009) (describing California’s Corporation for Supportive Housing’s design of a nationally replicable model for providing high-quality health, social, and employment services to persons living in extreme poverty).

205. Efforts are being made to reduce the disproportionate percentage of black youth in detention by identifying racial disparities at specific decision points (arrest, detention, and disposition) and for particular offense categories (violent and drug crimes). *See* MODELS FOR CHANGE: BUILDING MOMENTUM FOR JUVENILE JUSTICE REFORM (Justice Policy Institute, Dec. 2006), *available at* http://www.justicepolicy.org/images/upload/06-12_REP_ModelsForChange_JJ.pdf.

206. “Structural racism” refers to patterns in policies and practices that permeate American social, political and economic structures and generate differences in well-being between black and white Americans. *See generally* THE ASPEN INSTITUTE, STRUCTURAL RACISM AND COMMUNITY BUILDING (2004), *available at* http://www.aspeninstitute.org/atf/cf/%7BDEB6F227-659B-4EC8-8F848DF23CA704F5%7D/aspen_structural_racism2.pdf; *see also* Camara P. Jones, Research Dir. on Soc. Determinants of Health, Nat’l Ctr. for Chronic Disease Prevention and Health Promotion, Keynote Address at the Univ. of N.C. Chapel Hill School of Public Health’s 25th Annual Minority Health Conference: Confronting Institutionalized Racism (Feb. 28, 2003), *available at* http://glennmor.com/Racism%20and%20Health/support%20docs/PDF/Phylon_final_09_30_03.pdf.

207. *See generally* ASHLEY ELLIS ET AL., THE SENTENCING PROJECT, REDUCING RACIAL DISPARITY IN THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS (2008), *available at* http://www.sentencingproject.org/Admin/Documents/publications/rd_reducingracialdisparity.pdf.

may require different strategies for combating disparity; and working toward systemic change.²⁰⁸ Reentry is a critical stage in the criminal justice system. Reentry programming, and specifically holistic reentry, can confront and counteract racism by identifying specific localities and decision points at which race may be a factor in decision-making; providing assistance where data reveals racial disparities; developing and implementing policies, procedures and programs for changing practice when bias is identified; and improving access to services for black ex-offenders. The remainder of this article suggests a starting point for reentry policy and programming designed to counteract racism.

A holistic reentry model designed specifically to confront racial disparities in incarceration rates as well as socioeconomic inequities in black communities forms the proper context for confronting racism.²⁰⁹ I define “holistic reentry” as comprehensive policies, procedures, practices and programming designed to acknowledge the entire racial and socioeconomic situation of individual ex-offenders.²¹⁰ Through careful design and implementation, reentry programs (or “managed reentry”) can counteract racism by eliminating bias in, providing equitable access to, and assisting with utilization of social and economic resources. Offenders enter and exit incarceration with numerous interrelated mental, physical, and socioeconomic issues that originally contributed — directly and indirectly — to the commission of the crime that landed the offender in prison, and that will determine — directly and indirectly — the success or failure of reentry. The key is eliminating the barrier of racism in those social, economic, and political areas of life that are critical to the integration of returning ex-offenders. Reentry policy and programming can achieve this by providing comprehensive

208. *Id.* at 2.

209. Race-based reentry programming is available in other countries. For example, London’s Partners of Prisoners & Families Support Group (POPS) is designed for the special needs of black offenders. See Partners of Prisoners and Families Support Group (2009), <http://www.partnersofprisoners.org.uk> (last visited Feb. 27, 2009). The POPS model aims to provide black men with a positive understanding of their culture, build their confidence, and enable them to discuss their unique issues and determine how to solve them appropriately. Partners of Prisoners & Families Support Group, *Creating A Safe Place for Black Offenders*, Presented at the International Institute for Restorative Justice Practices, Manchester, England (Nov. 10, 2005) (on file with author).

210. See generally Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067 (2004). A holistic mindset “is an ever-searching one; it critiques the traditional and contemporary practice methods, searches for improved delivery of services and constantly presses for role reformation” while at the same time reconsidering the social psychological and socioeconomic factors that underlay criminal cases. *Id.* at 1068.

employment, housing, education, life skills, counseling, vocational training, work experience, health care, and social opportunities that are deliberately designed to counteract racial bias in language, attitudes, conduct, assumptions, and strategies.²¹¹

The first and perhaps most obvious way that managed reentry can counteract racism is by reducing the occurrence of events that lead to racial stigma in the first place — namely, by objectively reducing the number of crimes committed by black offenders. Research shows the power of managed reentry to decrease initial crime as well as recidivism rates.²¹² By decreasing the rate of black incarceration and recidivism rates, reentry reduces the occurrence of race-stigmatizing events which in the long run can overturn racial stereotypes.

Managed reentry can also counteract racism by providing concrete opportunities for socioeconomic parity. In other words, as black ex-offenders are encouraged toward, and successful in, their own efforts at employment, financial independence, and social stability, managed reentry can result in socioeconomic effects that contravene racial stereotypes and yield concrete social and economic advancement. This yields not only the “rehabilitation” of particular offenders, but a change in the entire social position of a discrete group of black Americans achieving parity with their white counterparts.

Finally, managed reentry provides an opportunity to discuss — openly and honestly — all socioeconomic racial disparities. Similarly, cooperation and genuine shared efforts between ex-offenders and other citizens serve not only to shatter myths about black offenders, but drive community resolve against racism and toward socioeconomic parity. Individuals who have spent years in prison do not need to be “rehabilitated” or “reintegrated” — they must be *integrated*. This means that they need concrete and readily available opportunities for full participation in their communities.

211. This will likely require coordination among correctional, social service, and community-based organizations — a daunting task, but one that has been successfully met in the past. For example, the Reentry Mapping Network, a partnership between the Urban Institute and organizations in cities across the country, manages collaboration across reentry sites. Reentry Mapping Network, http://www.urban.org/reentry_mapping (last visited Jan 22, 2009). In addition, the National Governors Association Reentry Policy Academy works with several states to assemble interdisciplinary reentry policy teams. NGA Prisoner Reentry Policy Academy, <http://www.nga.org/portal/site/nga/menuitem.1f41d49be2d3d33eacdcbeeb501010a0/?vgnextoid=6c239286d9de1010VgnVCM1000001a01010aRCRD> (last visited Jan 22, 2009).

212. See generally CTR. FOR FAITH-BASED AND CMTY. INITIATIVES, TOUCHING LIVES AND COMMUNITIES, WHITE HOUSE FBCI NATIONAL SUMMIT ON PRISONER REENTRY, CALL FOR PAPERS (2007), available at <http://www.docstoc.com/docs/623475/View-the-Papers-Presented>.

B. The Moment of Release

The “moment of release” is a crucial phase in ex-offender reentry. The socioeconomic conditions that accompany an ex-offender’s actual moment of release from prison determine not only his or her success in transitioning into the community, but also the likelihood that he or she will recidivate. Returning ex-offenders have education, employment, and skill levels well below the averages for the general population.²¹³ Many ex-offenders literally leave prison with nothing but the clothes on their back — no money, no transportation, no clothing, no toiletries, no housing, no way to contact people — unless their families (often of little means themselves) are able to provide these things. They are often released without any form of identification necessary to secure housing, employment, or public assistance; worse, ex-offenders are often released in the middle of the night, making it difficult or impossible to reconnect with family or service providers.²¹⁴ They also return to their communities with a host of physical and mental health problems²¹⁵ as well as substance abuse issues.²¹⁶ At the moment of release, all of the obstacles to successful reentry — obstacles magnified for black ex-offenders²¹⁷ — coalesce.

These challenges compounding reentry must be addressed long before the moment of reentry. A discussion of strategies for coordinating and initiating systemic change in the relevant stakeholders, including legislators, criminal justice professionals, correctional facilities, service providers, and community organizations, is outside the scope of this article.²¹⁸ But reentry policies and procedures can start by creating social and economic security for ex-offenders, and facilitating a quality of life that

213. See generally, D. A. ANDREWS & JAMES BONATA, *THE PSYCHOLOGY OF CRIMINAL CONDUCT* (1994).

214. PRISON TO HOME, *supra* note 17, at 19.

215. NAT’L COMM’N ON CORR. HEALTH CARE, *Prevalence of Communicable Disease, Chronic Disease and Mental Illness Among the Inmate Population*, in *THE HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES: A REPORT TO CONGRESS* (2002).

216. See generally CHRISTOPHER J. MUMOLA & JENNIFER C. KARBERG, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *DRUG USE AND DEPENDENCE, STATE AND FEDERAL PRISONERS 2004* (2006).

217. See *supra* text accompanying footnotes 84-97, 102-112, 125-141, 150-184.

218. For a discussion on the ways in which the justice system (including corrections, police, courts, and parole agencies) can coordinate and collaborate with public and private institutions (such as service providers, non-profits, and faith institutions), see JEREMY TRAVIS & CHRISTY VISHER, *PRISONER REENTRY AND CRIME IN AMERICA* (2005).

precludes crime, with a focus on employment, education, housing, and health.

C. Employment

A history of unstable employment is a factor consistently associated with incarceration and recidivism.²¹⁹ Reentry programming must address the three main causal mechanisms that link the experience of imprisonment to the risk of unemployment: the social stigma of incarceration, damage to human capital (e.g., job skills), and erosion of social capital (e.g., personal connections, job referral networks).²²⁰ Research indicates that stigma attached to contact with the criminal justice system reduces employment.²²¹ However, the employment prospects of black ex-offenders can be maximized through enforcement of legal protections that defend the rights of black ex-offenders.²²² For example, adverse employment decisions based on actual or suspected criminal records may constitute race discrimination in violation of Title VII of the Civil Rights Act.²²³ In addition, employers are precluded from adopting blanket prohibitions on the hiring or employment of ex-offenders.²²⁴ Employers can also be actively encouraged to hire black ex-offenders through financial incentives. For example, the Work Opportunity Tax Credit provides a federal incentive for employers to hire ex-offenders, and the Federal Bonding Program makes no-cost bonds available to protect employers who hire ex-offenders.²²⁵

In terms of damage to human capital during incarceration, evidence suggests that closely supervised employment opportunities can increase earnings and employment rates.²²⁶ Such supervision thereby has the potential to overcome incarceration's diminishing effect on black ex-offenders' prospects for financial success.²²⁷ A study of federal prisoners who participated in academic, vocational

219. Paul Gendreau et al., *A Meta-Analysis of the Predictors of Adult Criminal Recidivism: What Works*, 34 CRIMINOLOGY 575, 583 (1996).

220. *Consequences of Incarceration*, *supra* note 116.

221. *Id.* at 14.

222. *See Legal Strategies*, *supra* note 109.

223. 42 U.S.C. § 2000e-2(k) (2008).

224. *Legal Strategies*, *supra* note 109, at 5.

225. *Id.* at 5-6.

226. CONSEQUENCES OF INCARCERATION, *supra* note 116, at 16 (discussing Project RIO in Texas, an intervention designed to provide employment preparation and job search assistance to ex-offenders).

227. *See, e.g.,* Bruce Western & Becky Petit, *Incarceration and Racial Inequality in Men's Employment*, 54 INDUS. & LAB. REL. REV. 3, 11 (2000).

and employment programming also found a significant increase in ex-offender employment and a decrease in participant recidivism rates.²²⁸ Similarly, a meta-analysis of the recidivism outcomes of thirty-three different studies found that ex-offender participants in vocation and work programs recidivate at a lower rate than non-participants.²²⁹ Reentry employment efforts must address the general labor market discrimination that uniquely impedes black ex-offenders from gaining employment or earning higher wages.²³⁰ Reentering black ex-offenders must actively prepare for stable employment. They must be presented with legitimate employment opportunities, and they must receive fair compensation. In turn, they may overcome diminished prospects for economic stability throughout their lifetimes.²³¹

The development of social capital is crucial to the reentry of black ex-offenders who return to the community with little or no financial resources but innumerable financial needs. The creation of social bonds between ex-offenders and their communities is necessary for successful reentry.²³² Financial hardship reduces civic participation, undermines successful association activity, reduces neighborly assistance, and ultimately reduces the capacity for supportive social networks.²³³ In terms of the erosion of black ex-offenders' social capital, evidence suggests that carefully designed and administered education and work programs can promote ex-offenders' involvement in pro-social activities after release.²³⁴ The quality and availability of employment and job placement services can have a significant impact on the extent to which ex-offenders succeed in their communities.²³⁵ Reentry programming must overcome the essentially wasted time of incarceration that interrupts

228. CONSEQUENCES OF INCARCERATION, *supra* note 116, at 16-17. See generally William G. Saylor & Gerald G. Gaes, *Training Inmates through Industrial Work Participation and Vocational and Apprenticeship Instruction*, 1 CORRECTIONS MGMT. Q. 32 (1997).

229. David B. Wilson & Catherine A. Gallagher, *A Meta-Analysis of Corrections-Based Education, Vocation, and Work Programs for Adult Offenders*, 37 J. OF RES. IN CRIME & DELINQ. 347, 347 (2000).

230. See HARRY J. HOLZER ET AL., URBAN INST., EMPLOYMENT BARRIERS FACING EX-OFFENDERS, 5-6 (2003), available at www.sscnet.ucla.edu/issr/csup/pubs/papers/pdf/csup6.pdf.

231. CONSEQUENCES OF INCARCERATION, *supra* note 116, at 16-17.

232. Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1283 (2004).

233. See Rose & Clear, *supra* note 47, at 187.

234. Gerald Gaes et al., *Adult Correctional Treatment*, in CRIME AND JUSTICE: A REVIEW OF RESEARCH 361, 385 (Michael Tonry & Joan Petersilia eds., 1999).

235. COUNCIL OF STATE GOV'TS, BUILDING BRIDGES: FROM CONVICTION TO EMPLOYMENT: A PROPOSAL TO REINVEST CORRECTIONS SAVINGS IN AN EMPLOYMENT INITIATIVE (2003), available at <http://www.csgeast.org/pdfs/justicereinvest/BuildingBridges.pdf>.

an ex-offender's social and vocational skills and abilities; this can be overcome through in-prison programming²³⁶ as well as by making it easier for employers to hire prisoners while they are still incarcerated.²³⁷

Reentry presents an opportunity for ex-offenders to become fully participating and contributing members of their communities. Ex-offenders return home with skills, abilities, and talents that can be employed as community assets; they can utilize the social capital that they already have by engaging in community improvement projects.²³⁸ Faith organizations²³⁹ and social marketing strategies²⁴⁰ can play an important role in building the social capital of black ex-offenders. Through civic and economic participation ex-offenders increase their positive social networks and, at the same time, can make clear positive contributions to their neighborhoods²⁴¹ while countering the influence of negative social ties (such as gang affiliations and illegal labor relations) relied upon before and during incarceration.²⁴² In turn, this counteracts the stigma associated with black ex-offenders in particular. This cumulative social engagement can expand social capital by engaging ex-offenders in positive community networks, which they may then utilize to secure jobs, housing, and services.

Finally, the simple dissemination of information may improve

236. See, e.g., SARAH LAWRENCE ET AL., URBAN INST., *THE PRACTICE AND PROMISE OF PRISON PROGRAMMING* (May 2002) [hereinafter *PRISON PROGRAMMING*].

237. See HARRY J. HOLZER ET AL., URBAN INST., *EMPLOYMENT DIMENSIONS OF REENTRY: UNDERSTANDING THE NEXUS BETWEEN PRISONER REENTRY AND WORK* 15 (2003) (discussing efforts that can be undertaken by policymakers to reduce ex-offender employment barriers).

238. See, e.g., JAMES B. HYMAN, *THE NATIONAL TRUST FOR THE DEVELOPMENT OF AFRICAN-AMERICAN MEN, THE NATIONAL TRUST: OFFERING A NEW VISION FOR REINTEGRATING RETURNING EX-OFFENDERS INTO PRODUCTIVE COMMUNITY LIFE* (2003), available at <http://www.jamesbhyman.com/Publications/AECF%20Paper%20on%20the%20National%20Trust.pdf>.

239. See, e.g., ROBERT D. PUTNAM & LEWIS M. FELDSTEIN, *BETTER TOGETHER: RESTORING THE AMERICAN COMMUNITY* (2003); BYRON JOHNSON, U.S. DEP'T OF HEALTH & HUMAN SERVICES, *NOT BY GOVERNMENT NOR FAITH ALONE: RETHINKING PRISONER REENTRY* (2008), available at http://innovationincompassion.hhs.gov/documents/Johnson_Page17.pdf.

240. For example, Chicago's Project Safe Neighborhoods program utilizes this strategy in targeting gang-affiliated ex-offenders. See Andrew Papachristos & Jeffrey Fagan, *Attention Felons: Evaluating Project Safe Neighborhoods in Chicago*, 4 J. EMPIRICAL LEGAL STUD. 223 (2007); See also Project Safe Neighborhoods, <http://www.psnchicago.org> (last visited Jan. 28, 2009).

241. See Rose & Clear, *supra* note 47, at 192.

242. See RICHARD GREENBERG, NEW JERSEY INST. FOR SOC. JUSTICE, *DO NO HARM: A BRIEFING PAPER ON THE REENTRY OF GANG-AFFILIATED INDIVIDUALS IN NEW JERSEY* (2007), available at http://www.njisj.org/documents/DoNoHarm_August2007_000.pdf, for a discussion of the acute reentry challenges faced by incarcerated gang members.

the social capital of ex-offenders. Social capital includes empowerment that comes from residents' feeling that they have a voice, are involved in social policies and processes that affect them, and have the ability to identify and initiate needed change.²⁴³ When ex-offenders, families and communities have information about the criminal justice system generally, and about criminal justice issues affecting them personally, they can empower themselves to make more informed decisions about their own lives and to suggest overall system improvements. Unfortunately, many ex-offenders may not understand the requirements of their release from incarceration. In a survey of all states conducted in 2000, "two-thirds reported that they do not provide any documentation or reporting instructions" for ex-offenders upon their release.²⁴⁴ Not only do ex-offenders have a right to access this information, but having such information is prerequisite to meeting the criminal justice requirements of their release and to decreasing the likelihood of technical violations and related causes for re-incarceration.

D. Education

Educational disparities between ex-offenders and non-offenders, and between black and white Americans, have far-reaching effects on the ability of reentering black ex-offenders to successfully integrate into their communities. Black ex-offenders are the products of an educational system that demonstrates consistent racial disparities between black and white students. The school readiness gap across racial groups has been well documented.²⁴⁵ Studies have documented score gaps between black and white students in vocabulary, reading and math tests, as well as on tests measuring scholastic aptitude and intelligence, during every year of schooling.²⁴⁶ Students in

243. See Ray Forrest & Ade Kearns, *Social Cohesion, Social Capital and the Neighborhood*, 38 URB. STUD. 2125, 2140 (2001).

244. PRISON TO HOME, *supra* note 17, at 19 (citing American Correctional Assoc., *A Survey of Correctional Agencies' Research Topics and Interests*, 25 CORRECTIONS COMPENDIUM 2, 8 (2000)).

245. See, e.g., JERRY WEST ET AL., NAT'L CTR. FOR EDUC. STATISTICS, *THE KINDERGARTEN YEAR: FINDINGS FROM THE EARLY CHILDHOOD LONGITUDINAL STUDY* (2001); KRISTIN DENTON & JERRY WEST, NAT'L CTR. FOR EDUC. STATISTICS, *CHILDREN'S READING AND MATHEMATICS ACHIEVEMENT IN KINDERGARTEN AND FIRST GRADE* (2002).

246. See, e.g., *THE BLACK-WHITE TEST SCORE GAP* (Christopher Jencks & Meredith Phillips eds., Brookings Institute Press 1998) (discussing test-score gaps between black and white students and arguing that eliminating this disparity would dramatically reduce economic and educational inequality between blacks and whites generally); JACOBSON ET AL., NATIONAL CENTER FOR EDUCATION STATISTICS, *EDUCATIONAL ACHIEVEMENT AND BLACK-WHITE INEQUALITY* (2001) (investigating black-white disparities present in individuals with similar

predominantly black, and especially urban, areas are significantly disadvantaged in terms of course placement, academic achievement, and general academic engagement.²⁴⁷ Racial segregation operates in a variety of ways that limit black students' opportunities for education.²⁴⁸ Generalized racist attitudes on the part of teachers and administrators also exacerbate the black-white educational achievement gap.²⁴⁹

Since education and employment are fundamentally intertwined, racial disparities in employment outcomes are partially explained by underlying disparities in education and experience.²⁵⁰ Most ex-offenders leave incarceration without the educational requirements needed for successful reintegration.²⁵¹ In a recent poll of offenders leaving state prisons, over 40 percent had less than a high school education and only 25 percent had received a GED.²⁵² At every income level, the average educational attainment is lower among blacks than whites; low-income blacks are significantly less likely than whites to complete high school or obtain a GED.²⁵³ Whites are also substantially more likely to have college degrees than blacks.²⁵⁴

Given these facts, black ex-offenders enter and exit incarceration with a significant educational disadvantage. While evidence indicates that correctional educational programming can decrease recidivism rates and increase employment rates,²⁵⁵ prison-based

levels of educational achievement).

247. See Christy Lleras, *Race, Racial Concentration, and the Dynamics of Educational Inequality Across Urban and Suburban Schools*, 45 AM. EDUC. RES. J. 886 (2008) (using national data to evaluate educational inequality in schools with high and low percentages of black students).

248. Roslyn A. Mickelson, *Subverting Swann: First- and Second-Generation Segregation in the Charlotte-Mecklenburg Schools*, 38 AM. EDUC. RES. J. 215 (2001) (examining the negative effects of physical segregation of schools by racial composition as well as segregation by race as a consequence of academic tracking).

249. See Ronald Ferguson, *Teachers' Perceptions and Expectations and the Black-White Test Score Gap*, in *THE BLACK-WHITE TEST SCORE GAP*, *supra* note 246, at 273.

250. See generally James P. Smith, *Race and Ethnicity in the Labor Market: Trends over the Short and Long Term*, in *AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES VOL. II* 52, 56 (Neil J. Smelser et al. eds., 2001).

251. ROSE ET AL., *supra* note 78.

252. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *PROFILE OF NONVIOLENT OFFENDERS EXITING STATE PRISONS I* (Oct. 2004) available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pnoesp.pdf>.

253. MARGERY A. TURNER ET AL., *URBAN INST., RACIAL DISPARITIES AND THE NEW FEDERALISM* 8 (2007), available at http://www.urban.org/UploadedPDF/411563_racial_disparities.pdf.

254. *Id.*

255. J. GERBER & E. FRITSCH, *PRISON EDUC. RESEARCH PROJECT, THE EFFECTS OF ACADEMIC AND VOCATIONAL PROGRAM PARTICIPATION ON INMATE MISCONDUCT AND REINCARCERATION* (1994).

educational programming²⁵⁶ has significantly declined over the past ten years due to rapid prison growth, frequent transferring of offenders between facilities, decreased federal funding for higher education programs, and greater interest in short-term substance abuse treatment and anger management programs over education.²⁵⁷

Educational opportunities are an effective means of overcoming the socioeconomic barriers faced by black ex-offenders. Research indicates that ex-offenders who participate in education programs are more likely to be employed and less likely to return to prison than those who do not.²⁵⁸ GED programs are perhaps the most commonly available educational opportunity for offenders, and obtaining a GED has been correlated with decreases in recidivism rates.²⁵⁹ However, ex-offenders who obtain GEDs are more likely to be white than black.²⁶⁰ Given research indicating that participation in educational programming increases the likelihood of employment,²⁶¹ black ex-offenders should at a minimum be provided with the opportunity to obtain a GED. Research further indicates that life-skills training, in addition to basic education skills training, may reduce recidivism rates. Premised on the notion that offenders may have various non-academic skill deficiencies — such as establishing healthy relationships, controlling anger, setting boundaries, and conducting job searches — life-skills training addresses a variety of factors important to successful integration into the community.²⁶²

Offenders are released from incarceration with a specific set of individual characteristics — including demographic characteristics, health conditions, work experience, and life skills — that must be

256. Prisoner educational needs include GED/high school diploma programs, Adult Basic Education, Special Education, and English as a Second Language. *See id.*

257. PRISON PROGRAMMING, *supra* note 236, at 2.

258. *Id.* at 3-6.

259. DORIS L. MACKENZIE, URBAN INST., STRUCTURES AND COMPONENTS OF SUCCESSFUL EDUCATIONAL PROGRAMS 7 (2008), *available at* <http://www.urban.org/projects/reentry-roundtable/upload/Mackenzie.pdf>.

260. *See, e.g.,* Philip D. Holley & Dennis Brewster, *An Examination of the Effectiveness of GED Programs Within the Oklahoma Department of Corrections*, 4 J. OF THE OKLAHOMA CRIMINAL JUSTICE RES. CONSORTIUM (1997/1998), *available at* http://www.doc.state.ok.us/offenders/ocjrc/97_98/An%20Examination%20of%20the%20Effectiveness%20of%20GED%20Programs.pdf (finding that being white was a noteworthy characteristic of GED completers in Oklahoma).

261. *See, e.g.,* J. Gerber & E. J. Fritsch, *Adult Academic and Vocational Correctional Education Programs: A Review of Recent Research*, 22 J. OFFENDER REHABILITATION 119 (1995).

262. *See, e.g.,* PETER FINN, NAT'L INST. OF JUSTICE, THE DELAWARE DEPARTMENT OF CORRECTIONS LIFE SKILLS PROGRAM (1998), *available at* <http://www.ncjrs.gov/pdffiles/169589.pdf>.

taken into account when developing educational and employment programming options.²⁶³ The most successful employment and educational program options focus on the individual ex-offender's needs and skills that are most applicable to the current job market.²⁶⁴ Further marks of success include providing programming for at least several months and integrating treatments, programs and services to avoid redundancy or conflict.²⁶⁵ A focus on improving ex-offenders' motivation to better themselves and to become active agents in their own reentry may be the most important and effective strategy for successful reentry.²⁶⁶ Educational attainment by black ex-offenders can initiate intergenerational progress toward closing the gap between black and white Americans not only in terms of income and wealth, but also in terms of the likelihood to commit crimes.

E. The Health Challenges of Reentry

Physical and mental health problems exacerbate the various social and economic obstacles confronting black ex-offenders. Black Americans fare lower than white Americans on the entire spectrum of health issues, from health care and insurance, to chronic illness and mortality rates.²⁶⁷ The cyclical effect of poor health on education, employment, and wage prospects contributes to continued race disparities.²⁶⁸

The health disparities between black and white Americans are generally magnified in the prison population. The prevalence of certain infectious diseases,²⁶⁹ substance abuse problems,²⁷⁰ and

263. PRISON PROGRAMMING, *supra* note 236, at 5.

264. *Id.* at 9.

265. *Id.*

266. *Id.* at 10-11.

267. See, e.g., Peter Franks et al., *Racial Disparities in the Content of Primary Care Office Visits*, 20 J. GENERAL INTERNAL MEDICINE 599, 600 (2005); Robert S. Levine et al., *Black-White Inequalities in Mortality and Life Expectancy, 1933-1999: Implications for Healthy People 2010*, 116 PUBLIC HEALTH REPORTS 474, 475 (2001).

268. See, e.g., Darrell J. Gaskin et al., *Racial Disparities in Health and Wealth: The Effects of Slavery and Past Discrimination*, 32 REV. BLACK POL. ECON. 95 (2005); Timothy Waidmann & Shruti Rajan, *Race and Ethnic Disparities in Health Care Access and Utilization: An Examination of State Variation*, 57 MEDICAL CARE RES. & REV. 55 (2000); Timothy Waidmann et al., *Explaining Differences in Employer-Sponsored Insurance Coverage by Race, Ethnicity and Immigrant Status* (Economic Research Initiative on the Uninsured, Working Paper 42, 2004).

269. The prevalence of AIDS among inmates is five times higher than among the total U.S. population; state prisoners test positive for HIV at a rate five to seven times greater than that of the general public. NAT'L COMM'N ON CORRECTIONAL HEALTH CARE, THE HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES: A REPORT TO CONGRESS 17 (2002), available at http://www.ncchc.org/pubs/pubs_stbr.html.

270. Nationally, only 10 percent of state prisoners in 1997 reported receiving formal

mental health disorders²⁷¹ is significantly greater in inmate populations than in the general American population.²⁷² Unfortunately, a national survey found that less than a quarter of parole administrators provide special programs for parolees with mental illness.²⁷³ In addition, although two-thirds of state prisons report that they provide a referral for community health treatment upon release, few support ex-offenders by actually setting up appointments with treatment providers.²⁷⁴ Given that ex-offenders leave incarceration without money, transportation, housing, or any means of finding and contacting treatment providers,²⁷⁵ this often results in ex-offenders simply not getting the treatment they need.

In the absence of treatment, the risk of relapse following release is high. For example, an estimated two-thirds of untreated cocaine abusers resume their use and patterns of criminal behavior to support their habit within a mere three months of release from prison.²⁷⁶ The combination of mental illness and substance abuse is an especially strong predictor of recidivism: More than one-third of mentally ill state prisoners indicate a history of alcohol dependence, and nearly 60 percent indicate that they were under the influence of alcohol or drugs while committing their current offenses.²⁷⁷ Given the significant proportion of prisoners experiencing both poor mental and physical health, the presence of dual and triple diagnoses among ex-offenders is not a surprise;²⁷⁸ this in turn poses additional challenges for ex-offenders beginning reentry. Few state correctional systems

substance abuse treatment, down from 25 percent in 1991. Christopher J. Mumola, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT 10, SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL PRISONERS 1997 (1999), available at <http://www.ojp.gov/bjs/pub/pdf/satsfp97.pdf>.

271. Mental illness rates are higher in inmates than in the U.S. population as a whole. NAT'L COMM'N ON CORRECTIONAL HEALTH CARE, *supra* note 269, at 26.

272. *Id.*

273. A.J. Lurigio, *Effective Services for Parolees with Mental Illnesses*, 47 CRIME AND DELINQ. 445, 462-485 (2001).

274. A. BECK & L. MARUSCHAK, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MENTAL HEALTH TREATMENT IN STATE PRISONS: 2000 (2001), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhtsp00.pdf>.

275. See *supra* text accompanying footnotes 221-25.

276. H. K. WEXLER ET AL., U.S. DEP'T OF JUSTICE, A CRIMINAL JUSTICE SYSTEM STRATEGY FOR TREATING COCAINE-HEROIN ABUSING OFFENDERS IN CUSTODY (1998), available at <http://www.druglibrary.org/schaffer/GovPubs/cjstcha.htm>.

277. P. M. DITTON, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, MENTAL HEALTH AND TREATMENT OF INMATES AND PROBATIONERS (1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/mhtip.pdf>.

278. See, e.g., T.M. Hammett et al., *Health-Related Issues in Prisoner Reentry*, 47 CRIME AND DELINQ. 390, 391 (2001) (discussing multiple diagnoses of mental health and substance abuse issues).

have programs in place to help transition prisoners with multiple diagnoses back into the community.²⁷⁹ And because offenders cannot access Medicare or Medicaid benefits until release from incarceration, they almost always experience a gap — from days to months — between release and approval for health benefits. This presents a major obstacle to the continuity of care required for successful reentry.²⁸⁰

Targeted efforts are underway across the country to overcome racial disparities in health care and treatment. For example, the Centers for Disease Control and Prevention has implemented a Racial and Ethnic Approaches to Community Health (“REACH”) initiative that targets health disparities in minority communities.²⁸¹ South Carolina has launched efforts to provide exams and checkups that prevent complications from diabetes, such as stroke and heart disease, for which black Americans are at a disproportionate risk.²⁸² Importantly, by targeting black community members for whom the diabetes prevalence and complication rates exceed those of other races, the Diabetes Initiative of South Carolina is directly reducing racial disparities in diabetes awareness and education, health care access, and disease complications.²⁸³ REACH programs have also resulted in increased cholesterol screenings in black populations, as well as a reduction in diabetes-related amputations among black men.²⁸⁴ These kinds of projects suggest that reentry programming can be designed to counteract racial disparities in diseases including diabetes, kidney disease, hypertension, stroke, and asthma.²⁸⁵

Like employment and education, disparities in health condition and care between black and white Americans generally, and between black and white ex-offenders specifically, have significant effects on

279. AMY L. SOLOMON ET AL., URBAN INST., OUTSIDE THE WALLS: A NATIONAL SNAPSHOT OF COMMUNITY-BASED PRISONER REENTRY PROGRAMS 53, available at http://www.urban.org/UploadedPDF/410911_OTWRResourceGuide.pdf.

280. *Id.*

281. See Centers for Disease Control and Prevention, Racial and Ethnic Approaches to Community Health, <http://www.cdc.gov/reach/> (last visited Feb. 2, 2009).

282. See, e.g., JOHN A. COLWELL, DIABETES INITIATIVE OF SOUTH CAROLINA, 2007 ANNUAL REPORT 2 (2008), available at <http://clinicaldepartments.musc.edu/medicine/divisions/endocrinology/dsc/>.

283. See Carolyn Jenkins, *REACH 2010: Charleston and Georgetown Diabetes Approaches to Reducing Disparities for African Americans with Diabetes*, in THE SOUTH CAROLINA NURSE, Jan. – Mar., 2003.

284. Wayne Giles, Dir., Nat'l Ctr for Chronic Disease Prevention and Health Promotion, Presentation at the 2007 Society for Public Health Education Conference: Addressing Racial and Ethnic Health Disparities (slides available at http://www.cdc.gov/reach/pdf/giles_sophe.pdf).

285. See generally BlackHealthCare.com, <http://www.blackhealthcare.com/BHC/IndexV1.asp> (last visited Feb. 5, 2009).

the ability of black ex-offenders to successfully integrate into their communities. Reentry programs provide a unique opportunity to address race disparities in health care and treatment through coordinating services designed to facilitate successful socioeconomic integration of black ex-offenders. The success of programs like REACH indicates that targeting health programming to black ex-offenders can directly counteract race disparities in disease education, treatment, and prevention. The unique health needs of black Americans are well-documented by the U.S. Department of Health and Human Services ("HHS"),²⁸⁶ the National Institutes of Health ("NIH"),²⁸⁷ and the Center for Disease Control ("CDC").²⁸⁸ Black ex-offenders represent a concrete, readily identifiable population in which to target reentry programming aimed at counteracting the health disparities identified by these organizations. Fortunately, the HHS, NIH and CDC have not only identified specific race disparities in health care, they provide specific recommendations for counteracting disparities in diseases and conditions like cancer, stroke, diabetes, and cardiovascular disease, as well as remedying disparities in health-related awareness, education, treatment, prevention, and even employment.²⁸⁹

While recommendations for specific health-related reentry programming is beyond the scope of this article, a few things are clear. Prison inmates need improved screening, prevention and treatment programs as well as better discharge and transitional planning.²⁹⁰ Information is perhaps the most important thing that ex-offenders need: information about what health services they need, who they need to talk to, where to go, and how to get there.²⁹¹ Ex-offenders should exit incarceration with copies of discharge papers describing their health conditions, as well as legal identification (such as a Social Security card or birth certificate) required for the provision of health services (and required for other necessities, like

286. U.S. Dep't of Health & Human Services, Office of Minority Health, <http://www.omhrc.gov> (last visited Feb. 2, 2009).

287. National Institutes of Health, National Center on Minority Health and Health Disparities, <http://www.ncmhd.nih.gov> (last visited Feb. 2, 2009).

288. Centers for Disease Control and Prevention, Office of Minority Health & Health Disparities, <http://www.cdc.gov/omhd/Populations/BAA/BAA.htm> (last visited Feb. 2, 2009).

289. *Id.*

290. See Rand Research Brief, *Prisoner Reentry: What are the Public Health Challenges?* 2 (2003).

291. In focus groups held after release, former prisoners in Cincinnati, Ohio reported that their biggest obstacle to accessing needed healthcare was a lack of information provided pre-release about community services. CHRISTY A. VISHER ET AL., URBAN INST., IN NEED OF HELP: EXPERIENCES OF SERIOUSLY ILL PRISONERS RETURNING TO CINCINNATI 12 (2005).

housing). Upon release, ex-offenders should receive assistance in applying for medical benefits, be provided with any necessary medications to cover the time period until such medical benefits are obtained, receive specific community connections to physical and mental health treatment, and assistance with setting up necessary appointments as well as securing transportation to them. After release, reentry programming can serve to counteract the various race disparities in healthcare by providing targeted prevention, education, and treatment opportunities for black ex-offenders. Differences in the quality and quantity of healthcare accessed by black and white Americans is a function of a variety of factors including barriers due to a lack of insurance, inadequate income, and inaccessibility of providers, aspects of the healthcare system that disproportionately affect racial minorities, and discrimination in the patient-provider relationship.²⁹² All of these factors can be directly confronted through reentry programming, and there is evidence that providing targeted health services for returning prisoners is cost-effective.²⁹³ By acknowledging the interconnectedness of race, health, and socioeconomic conditions, reentry efforts can further improve the likelihood of successful ex-offender integration.

Conclusion

The staggering statistics that correlate incarceration and recidivism to race are not improving as we enter 2009. One out of three black males will enter state or federal prison during his lifetime.²⁹⁴ Two-thirds of those incarcerated will recidivate within three years, and a disproportionate number of them will be black.²⁹⁵ The mass incarceration of black males yields devastating effects on black communities including economic and political decline, social isolation, increased crime, and intergenerational consequences for black families. The social, political, and economic impact of incarceration on ex-offenders themselves cannot be overstated. This article has highlighted the fact that ex-offenders exit incarceration and return to their communities with impaired social, economic, and

292. BOWEN GARRETT, URBAN INST., RACIAL AND ETHNIC DIFFERENCES IN INSURANCE COVERAGE AND HEALTH CARE ACCESS AND USE: A SYNTHESIS OF FINDINGS FROM THE ASSESSING THE NEW FEDERALISM PROJECT 3 (2006).

293. See, e.g., Embry M. Howell et al., *What is Known About the Cost-Effectiveness of Health Services for Returning Prisoners?*, 10 J. OF CORRECTIONAL HEALTH CARE 399 (2004) (reviewing literature on the cost-effectiveness of health services for ex-offenders).

294. See *supra* text accompanying notes 2 and 11.

295. See *supra* text accompanying notes 15 and 26.

political rights and privileges; stigmatization and stereotyping; limited education; poor employment preparation and few or no employment prospects; limited or no opportunity to access credit; poor social networks; distressed family dynamics; little access to crucial social benefits; and poor health. Black Americans are disproportionately harmed by the collateral consequences accompanying incarceration.

The race disparities in incarceration rates, as well as in the pervasiveness and severity of the collateral consequences accompanying incarceration, may be caused by overt or structural racism. Black Americans are so disproportionately harmed by the collateral consequences of incarceration that racial equity must be at the core of prisoner reentry planning and programming. Ex-offender reentry is an opportunity to confront and counteract racism by counteracting socioeconomic conditions that disproportionately harm black Americans and contribute to the commission of crime in the first place.

Given the inextricably interconnected nature of factors contributing to race disparities in incarceration, a holistic model of reentry programming is necessary. To begin to remedy these disparities, such a program must both confront racism and take into account the *entire* socioeconomic situation of black ex-offenders, from education and employment to health and family situation, transportation and housing to life skills and political participation. The key is eliminating the barrier of racism in those social, economic, and political spheres of life that are so crucial for successful black ex-offender reentry.

For example, given that some of the strongest predictors of recidivism are close relationships with criminal peers and a lack of education or employment skills,²⁹⁶ reentry programming developed specifically to counteract the racial disparities in education and employment will serve not only to decrease recidivism by black ex-offenders, but to remedy some of the conditions contributing to socioeconomic inequality generally. Reentry programming can counteract racism by eliminating bias in, and providing equitable and meaningful access to, social, political, and economic resources. By providing *comprehensive* education, employment, housing, counseling, training, health care, and socioeconomic opportunities *deliberately designed* to counteract racial bias in language, attitudes, assumptions, strategies, and service provision, reentry programming can effectively eliminate the barrier of racism for black ex-offenders.

296. See *supra* text accompanying notes 190-194.

This will require detailed, coordinated, and comprehensive efforts across the full spectrum of the criminal justice system, social service agencies, and community partners — as do reentry programs in general. It is time that we focus our reentry efforts on the intersection of race and incarceration and implement policies and procedures specifically designed to remedy the socioeconomic obstacles of returning black ex-offenders.
